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WASHINGTON, DC

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Contents

Federal Register

Vol. 60, No. 35

Wednesday, February 22, 1995

Agricultural Marketing Service
PROPOSED RULES
Florida grapefruit, oranges, and tangelos; grade standards, 9990–10004

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
England AFB, LA, 9822–9823

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Playmobil USA, Inc., 9860–9866

Arctic Research Commission
NOTICES
Meetings, 9820

Army Department
NOTICES
Meetings:
Science Board, 9823

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 9822

Defense Department
See Air Force Department
See Army Department

Education Department
NOTICES
Grantback arrangements; award of funds:
Oregon, 9823–9824

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Savannah River Site, SC—
F-Canyon plutonium solutions, 9824–9829
Grant and cooperative agreement awards:
WalMart Stores, Inc., 9829–9830
Meetings:
Nuclear Safety External Regulation Advisory Committee, 9830

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 9830–9831

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Washington, 9778–9780
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Acrylamide-potassium acrylate-acrylic acid copolymer, crosslinked, 9781–9783
Carbofuran, 9780–9781
Imidacloprid, 9783
Permethrin, etc., 9783–9786
PROPOSED RULES
Air and water programs:
Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards; data availability, 9813
Air pollutants, hazardous; national emission standards:
Wood furniture manufacturing operations, 9812–9813
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 9810–9812
Washington, 9802–9810
Air quality planning purposes; designations of areas:
Maine, 9813–9815
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Imidacloprid, 9815–9816
Methyl anthranilate, 9816–9817
NOTICES
Agency information collection activities under OMB review, 9835
Diesel emissions; health assessment document availability; extension of public comment period, 9835–9836
Drinking water:
Public water supply supervision program—
New York, 9836–9837
Virgin Islands, 9837
Pesticide registration, cancellation, etc.:
Green Light 10% Sevin Dust, etc., 9837–9838
LipaTech, Inc., 9838–9839
Pesticides; temporary tolerances:
Monsanto Co., 9839–9840

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
General Electric Co., 9792–9794
Jetstream, 9794–9796
Lockheed, 9796–9799
Piper, 9799–9800
Teledyne Continental Motors, 9800–9802

Federal Communications Commission
RULES
Common carrier services:
Public mobile services—
Revision; correction, 9889–9892
Radio services, special:
Private land mobile services—
220-222 MHz frequency band use; station construction deadline extension, 9787–9788

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
California, 9840

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Electronic Bulletin Boards Standards
Natural gas pipeline tariff rate related to released capacity, 9775–9776
NOTICES
Electric rate and corporate regulation filings:
Consolidated Edison Co. of New York, Inc., et al., 9831–9833
Washington Power Co., L.P., 9833
Environmental statements; availability, etc.:
Takoma, WA, 9831
Hydroelectric applications, 9833–9835

Federal Maritime Commission
RULES
Conflict of interests, 9786–9787
NOTICES
Agreements filed, etc., 9840
Freight forwarder licenses:
Marmara, Inc., et al., 9840

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 9888
Applications, hearings, determinations, etc.:
Bergau, Glenn Fred, 9840
First Community Bancshares, Inc., 9840–9841
First Mariner Bancorp, et al., 9841

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 9841–9842
Prohibited trade practices:
Equifax Credit Information Services, Inc., 9842–9847
Tele-Communication, Inc., 9847–9852

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Travis County, TX; Golden-cheeked warbler, 9855

Forest Service
NOTICES
Environmental statements; availability, etc.:
Kootenai National Forest, MT, 9818–9820

General Accounting Office
RULES
Practice and procedure:
Personnel Appeals Board, 9773

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Grain standards:
Corn, 9790–9792

Health and Human Services Department
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Immigration and Naturalization Service
RULES
Immigration:
Immigration forms; application for asylum and withholding of deportation (Form I–589); compliance date establishment, 9774
Philippine natives naturalization (Form N–400); fee schedule, 9773–9774

Interagency Committee on Women's Business Enterprise
See Women's Business Enterprise Interagency Committee

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office
RULES
Assistance programs; administrative and audit requirements and cost principles:
Nonprocurement debarment and suspension; drug-free workplace; and lobbying certification requirements, 9786
Range management:
Grazing administration, 9894–9971

Internal Revenue Service
RULES
Income taxes:
Subchapter K anti-abuse rule
Correction, 9776–9777

International Trade Administration
PROPOSED RULES
North American Free Trade Agreement (NAFTA):
Antidumping and countervailing duties regulations, 9802
NOTICES
Antidumping:
Canned pineapple fruit from—
Thailand, 9820–9821
Malleable cast iron pipe fittings from—
Brazil, 9821–9822

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Huron & Eastern Railway Co., Inc., 9858
Norfolk Southern Railway Co., 9858–9859

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Bankruptcy Procedure Rules, 9859

Justice Department
See Antitrust Division
See Immigration and Naturalization Service

RULES
Organization, functions, and authority delegations:
Deputy Attorney General, 9777–9778
NOTICES
Pollution control; consent judgments:
Bostic, et al., 9859
Nalco Chemical Co. et al., 9859–9860
Taylor Lumber & Treating, Inc., 9860

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
RULES
Range management:
Grazing administration, 9894–9971

Mine Safety and Health Administration
NOTICES
Program policy letters:
First aid training for selected supervisors, 9986–9987
Public input in development and withdrawals, 9986
Workplace examinations, 9987–9988
Safety standard petitions:
Serendipity Mining, Inc. et al., 9866–9868

National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Director, Office of Vehicle Safety Compliance, 9788–9789

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 9852–9853
National Institute of Mental Health, 9853

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 9822

National Park Service
NOTICES
Concession contract negotiations:
Jacob Riis Park, Gateway National Recreation Area, NY, 9857
Concessions contracts and permits; sample prospectus and related guidelines; availability, 9855–9857
Meetings:
Indian Memorial Advisory Committee, 9857
National Register of Historic Places:
Pending nominations, 9857–9858

National Science Foundation
NOTICES
Administrative programs; alternative means of dispute resolution; policy statement, 9868

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 9868
Meetings; Sunshine Act, 9888
Regulatory guides; issuance, availability, and withdrawal, 9868–9869
Applications, hearings, determinations, etc.:
Blackhawk Engineering, Inc., 9869–9870
Yankee Atomic Electric Co., 9870–9871

Public Health Service
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications, exemptions, renewals, etc., 9882–9885

Securities and Exchange Commission
NOTICES
Meetings:
Securities uniformity law; annual conference, 9871–9875
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 9875–9877
Midwest Securities Trust Co., 9877–9878
National Association of Securities Dealers, Inc., 9878–9880
Philadelphia Stock Exchange, Inc., 9880–9881
Applications, hearings, determinations, etc.:
Transamerica Tax-Free Funds Trust, 9881

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 9882

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreement awards:
Pennsylvania Department of Health, 9853–9855
Grants and cooperative agreements; availability, etc.:
Knowledge dissemination conference et al.; correction, 9853

Surface Mining Reclamation and Enforcement Office
RULES
Abandoned mine land reclamation:
Grant procedures; miscellaneous amendments, 9974–9984

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Depositor Protection Oversight Board
NOTICES
Meetings; regional advisory boards:
Regions I through VI, 9885

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Navcom Aviation, Inc., et al., 9882

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 9885–9887

Women's Business Enterprise Interagency Committee
NOTICES
Meeting, 9887

Separate Parts In This Issue

Part II
Department of the Interior and Bureau of Land Management, 9894–9971

Part III
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 9974–9984

Part IV
Department of Labor, Mine Safety and Health Administration, 9986–9988

Part V
Department of Agriculture, Agricultural Marketing Service, 9990–10004

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

4 CFR
28.....9773
29.....9773

7 CFR

Proposed Rules:
51.....9990
810.....9790

8 CFR
103.....9773
299.....9774

14 CFR

Proposed Rules:
39 (5 documents) 9792, 9794, 9796, 9799, 9800

18 CFR
284.....9775

19 CFR

Proposed Rules:
353.....9802
355.....9802
356.....9802

26 CFR
1.....9776

28 CFR
0.....9777

30 CFR
870.....9974
886.....9974
887.....9974
888.....9974

40 CFR
52.....9778
180 (4 documents) 9780, 9781, 9783
185.....9783
186.....9783

Proposed Rules:
52 (3 documents) 9802, 9810
63 (3 documents) 9802, 9812, 9813
81.....9813
180 (2 documents) 9815, 9816
430.....9813

43 CFR
4.....9894
12.....9786
18.....9786
1780.....9894
4100.....9894

46 CFR
500.....9786

47 CFR
1.....9889
22.....9889
90.....9787

49 CFR
501.....9788

Rules and Regulations

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

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

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

GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Interim rule; extension of comment period.

SUMMARY: The General Accounting Office Personnel Appeals Board is extending until March 15, 1995, the deadline for receipt of public comments on the interim procedural rule that it published in the **Federal Register** on November 16, 1994 (59 FR 59103).

DATES: Comments on the interim rule must be received by the Board on or before March 15, 1995.

ADDRESSES: Comments should be addressed to: Patricia Reardon, Clerk of the Board, General Accounting Office Personnel Appeals Board, Suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Barbara Lipsky, Attorney, Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: On November 16, 1994, the General Accounting Office Personnel Appeals Board published interim procedural regulations in the **Federal Register** (59 FR 59103) and requested public comments on those regulations. The interim regulations provide procedures for the receipt and adjudication of appeals filed by employees of the Architect of the Capitol alleging discrimination on the basis of race, color, sex, national origin, religion, age, or disability. The interim regulations also include a few conforming amendments to the procedures governing appeals filed by employees of the General Accounting Office, and a change to the procedures for obtaining judicial review of Board decisions necessitated by a recent decision of the United States Court of Appeals for the District of Columbia Circuit. The regulations have been in effect on an interim basis since November 16, 1994. In order to ensure that all interested persons have an opportunity to submit comments on the regulations, the deadline for receipt of comments is being extended until March 15, 1995. The Board will carefully consider all comments received by that date in preparing the final regulations.

Beth L. Don,

Executive Director, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc. 95–4287 Filed 2–21–95; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1404F–92]

RIN 1115–AC34

Fee for Application for Naturalization Under Section 405 of the Immigration Act of 1990; Form N–400

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adopts without change, an interim rule published in the **Federal Register** on May 27, 1993, by the Immigration and Naturalization Service (the Service), which amended the existing fee schedule. The fee schedule was amended to recover the cost of providing special services under section 405 of the Immigration Act of 1990 (IMMACT), which allows for the naturalization of certain natives of the Philippines, based upon qualifying active duty military service during World War II, who would not otherwise be eligible for naturalization, and section 113 of the Departments of Commerce, State, Justice, and Related Agencies Appropriations Act of 1993, which permits the interview and naturalization of these persons in the Philippines. The fee for naturalization in those cases was raised to recover the cost of providing those special services and benefits.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: W.R. Tollifson, Adjudications Officer, Naturalization and Special Projects Branch, Immigration and Naturalization Service, 451 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

On May 27, 1993, the Commissioner of the Immigration and Naturalization Service published in the **Federal Register** at 58 FR 30698–30699, an interim rule with request of comments to amend the Service's application fee schedule to include a surcharge for applications for naturalization where the applicant will be naturalized in the Philippines under section 405 of IMMACT.

The public was provided with a 45-day comment period which ended on July 12, 1993. No comments were received during that period. Accordingly, the fee for those applications processed in the Philippines and received by the Service on or after June 28, 1993, will remain $120.00.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule merely adopts without change, an interim rule which has been in effect since June 28, 1993.

Executive Order 12866

This regulation is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed 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 rule does not

have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

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

List of Subjects in 8 CFR Part 103

Administrative practices and procedures, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds, Fees, Forms.

Accordingly, the interim rule amending 8 CFR part 103 which was published in the **Federal Register** on May 27, 1993 at 58 FR 30698–30699 is adopted as a final rule without change.

Dated: February 9, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4258 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 299

[INS No. 1651N–95]

RIN 1115–AD64

Form I–589; Request for Asylum and Withholding of Deportation in the United States: Establishment of Compliance Date

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service's (Service) regulations by updating the listing of forms currently in use by the Service to reflect the current edition date (November 16, 1994) and title of the Form I–589, Application for Asylum and for Withholding of Deportation. This update is necessary to ensure that only the current edition of the Form I–589 listed in the regulations is used. Applications submitted on prior versions of the Form I–589 will not be accepted after March 24, 1995.

DATES: This rule is effective February 22, 1995. Applications submitted on the prior versions of the Form I–589 will not be accepted after March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Christine Davidson, Senior Policy Analyst, Office of International Affairs, Immigration and Naturalization Service, 425 ''I'' Street NW., Washington, DC 20536, Attn: ULLICO, Third Floor, Telephone: (202) 633–4389.

SUPPLEMENTARY INFORMATION: On November 4, 1994, a notice of revision of the Form I–589 was published in the **Federal Register** at 59 FR 55289. On November 28, 1994, the revised Form I–589 was approved by the Office of Management and Budget (OMB) for use by the Service under the provisions of the Paperwork Reduction Act. This rule amends 8 CFR 299.1 by updating the entry for the Form I–589 to reflect the current title and edition date (November 16, 1994).

The Form I–589 must be submitted when an individual who is present in the United States applies for asylum and for withholding of deportation. Applications submitted using a prior version of the November 16, 1994, Form I–589 will no longer be accepted after March 24, 1995, and the application will be returned by the Service. After March 24, 1995, the 150-day period after which the applicant may file an application for employment authorization in accordance with the regulations will not commence if the applicant submits a version of Form I–589 with a revision date prior to November 16, 1994.

The deadline for use of the prior version of the Form I–589 is, in the view of the INS, a rule of agency procedure or practice. Therefore, it is not subject to the notice and comment requirements of 5 U.S.C. § 553. The INS publishes this rule of procedure or practice in the **Federal Register** for the guidance of the public as required by 5 U.S.C. § 552.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is primarily administrative in nature and merely updates the existing forms listings currently contained in Title 8 of the Code of Federal Regulations.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation will not have an impact on family well-being.

List of Subjects in 8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, part 299 of chapter I of title 8 of the Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for part 299 continues to read as follows:

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

2. Section 299.1 is amended by revising the entry for ''Form I–589'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I–589	11–16–94	Application for Asylum and for Withholding of Deportation

* * * * *

Dated: February 14, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–4257 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–007; Order No. 563–E]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued February 15, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order granting clarification and extension of time.

SUMMARY: In response to a request for clarification submitted by the Electronic Bulletin Board Working Group, the Federal Energy Regulatory Commission is issuing an order making changes to the fields that report the maximum natural gas pipeline tariff rate related to released capacity. The order clarifies that pipelines must report only the maximum tariff rate related to the type of release involved; e.g., the maximum reservation rate for a reservation rate release and the maximum volumetric rate for a volumetric release. The order also grants an extension of time for pipelines to implement the new fields.

DATES: New fields must be implemented on or before March 17, 1995.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 208–0292

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE, Washington DC 20426.

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Order Granting Clarification and Extension of Time

Issued February 15, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On January 24, 1995, the Electronic Bulletin Board (EBB) Working Group filed a request for clarification of the Commission's December 29, 1994 order [1] requiring pipelines to include maximum rate fields as part of the capacity release data sets adopted by the Commission in Order No. 563.[2] The Working Group further requests an extension of time for compliance until the later of 30 days after the Commission issues a clarification order or the Gas*Flow implementation guide is available in the Commission's public reference room. The Commission will grant the requested clarification and will extend the time for compliance until 30 days from the date of this order.

In the December 29, 1994 order, the Commission accepted a proposal by the Working Group to include the maximum tariff rate for capacity posted for release. The Commission required the inclusion in the Award Data Set of the maximum reservation rate and maximum volumetric rate for released capacity. The Working Group had proposed that the fields should be considered optional, meaning that a pipeline would include the fields only if the pipeline chooses to do so or its tariff requires it to include the information. The Commission, however, concluded that the fields should be mandatory, because the Commission needed maximum rate data for all releases from all pipelines.

The Working Group requests clarification, contending that these fields should be designated conditional, rather than mandatory, fields. A mandatory designation would mean that data must be included in both of these fields for every release. The Working Group argues that if a release is a reservation rate release, there is no need to include the maximum volumetric rate, and *vice versa*.[3] The Working Group contends, therefore, that the maximum rate fields should be made conditional on the type of release involved, so that only the maximum rate related to the release would be provided; e.g., the maximum reservation rate for a reservation rate release and the maximum volumetric rate for a volumetric release.[4] The Working Group states that changing the field designation to conditional would not disturb the Commission requirement that pipelines provide the maximum rate data for all releases, but would only serve to ensure that unnecessary information would not be provided. The Working Group has included revised data sets to implement this change and stated that the datasets would be provided to the Gas*Flow group for incorporation into the EDI implementation guide.

The Commission will accept the proposed modification to make the fields conditional as described in the data sets. The intent of the December 29, 1994 order was to require pipelines to supply data on the maximum rate for each release, but the Commission did not intend that pipelines report a maximum rate that was unrelated to the type of release involved; e.g., a maximum reservation rate for a volumetric release. Such information

[1] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563–D, 60 FR 1718 (Jan. 5, 1995), 69 FERC ¶ 61,418 (Dec. 29, 1994).

[2] Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563–A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563–B, 68 FERC ¶ 61,002 (1994).

[3] If a release is a blended release comprised of both a reservation rate and volumetric component, the Working Group states that data would have to be supplied for both fields.

[4] In the argot of the data sets, they propose that each maximum rate field would be made conditional on the response to the Rate From Type Code, which is a mandatory field that describes whether the release is a (1) reservation rate, (2) volumetric, or (3) blended release. If the Rate Form Type Code is 1 indicating a reservation rate release, only the maximum reservation rate must be provided. If the Rate Form Type Code is 2 indicating a volumetric release, only the maximum volumetric rate must be provided. If the Rate Form Type Code is 3 indicating a blended release, both the maximum reservation rate and maximum volumetric rate must be provided.

would be superfluous. Since the Working Group's proposal would require pipelines to provide the relevant maximum rate for all releases, the Commission will accept it.

The Working Group further requests that the Commission provide an extension of time to comply with this requirement until the later of 30 days after the Commission issues a clarification order or the Gas*Flow implementation guide is available in the Commission's public reference room. The Commission will grant an extension of time until 30 days after the issuance of this order.

Unlike the Working Group's previous filing, a proposed EDI implementation guide was not provided along with the proposed change to conditional fields. The Commission needs the information on maximum release rates as promptly as possible and, given the minimum changes necessary to implement the change, the Commission concludes that, if Gas*Flow has not already made the necessary changes, it can make them promptly. Thus, a 30 day delay is adequate to implement the proposed changes. Once the implementation guide is finalized, it must be filed with the Commission. The data sets and EDI implementation guide will then be incorporated into the ''Standardized Data Sets and Communication Protocols'' which is available at the Commission's Public Reference and Files Maintenance Branch.

The Commission orders: (A) The Commission will grant the requested clarification and accept the conditional fields for maximum reservation rate and maximum volumetric rate as proposed in the January 24, 1995 filing.

(B) Pipelines must implement these new fields within 30 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4233 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8588]

RIN 1545–AS70

Subchapter K—Anti-Abuse Rule; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulation.

SUMMARY: This document contains corrections to the final regulation (TD 8588) which was published in the **Federal Register** for Tuesday, January 3, 1995 (60 FR 23). The final regulation provides an anti-abuse rule authorizing the Commissioner of Internal Revenue, in certain circumstances, to recast a transaction involving the use of a partnership.

EFFECTIVE DATE: January 3, 1995.

FOR FURTHER INFORMATION CONTACT: D. Lindsay Russell or Mary A. Berman at 202–622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections is under section 701 of the Internal Revenue Code.

Need for Correction

As published, TD 8588 inadvertently ommitted language and contains typographical errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulation which is the subject of FR Doc. 94–32331, is corrected as follows:

§ 1.701–2 [Corrected]

1. In the list below, for each Example in § 1.701–2, paragraph (d), indicated in the left column, the language in the middle column is removed, and the language in the right column is added.

§ 1.701–2(d)	Remove	Add
Example 3, heading, p. 28, 3rd column, 2nd line	limitation,	limitation;
Example 7(i), p. 29, 3rd column, 4th line	$100	$100*x*
Example 7(i), p. 29, 3rd column, 6th line	$6	$6*x*
Example 7(i), p. 29, 3rd column, 10th line	$50	$50*x*
Example 9(i), p. 30, 3rd column, 4th line	$9,000, $990, and $10	$9,000*x*, $900*x*, and $10*x*
Example 9(i), p. 30, 3rd column, 8th line	$10,000	$10,000*x*
Example 9(i), p. 30, 3rd column, 13th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 14th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 14th line	$8,100	$8,100*x*
Example 9(i), p. 30, 3rd column, 14th line	$891	$891x
Example 9(i), p. 30, 3rd column, 15th line	$9	$9x
Example 9(i), p. 30, 3rd column, 16th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 22nd line	$1,000 and $9,000	$1,000*x and $9,000x*
Example 9(i), p. 30, 3rd column, 24th line	$19,000	$19,000*x*
Example 9(i), p. 30, 3rd column, 25th line	$10,000	$10,000*x*
Example 9(i), p. 30, 3rd column, 26th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 27th line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 30th line	$9,000, $990	$9,000*x, $990x*
Example 9(i), p. 30, 3rd column, 31st line	$10	$10*x*
Example 9(i), p. 30, 3rd column, 32nd line	$8,000	$8,000*x*
Example 9(i), p. 30, 3rd column, 35th line	$1,881 and $19	$1,881*x and $19x*
Example 9(i), p. 30, 3rd column, 36th line	$9,801 and $99	$9,801*x and $99x*
Example 9(i), p. 30, 3rd column, 40th line	$1,000	$1,000*x*
Example 9(i), p. 30, 3rd column, 41st line	$9,000	$9,000*x*
Example 9(i), p. 30, 3rd column, 41st line	$8,910	$8,910*x*
Example 9(i), p. 30, 3rd column, 41st line	$90	$90*x*
Example 9(i), p. 30, 3rd column, 43rd line	$891	$891x
Example 9(i), p. 30, 3rd column, 44th line	$9	$9x
Example 10(i), p. 31, 1st column, 2nd line	$100	$100*x*
Example 10(i), p. 31, 1st column, 2nd line	$60	$60*x*
Example 10(i), p. 31, 1st column, 10th line	$30	$30*x*
Example 10(i), p. 31, 1st column, 28th line	$100	$100*x*

§ 1.701–2(d)	Remove	Add
Example 10(i), p. 31, 1st column, 32nd line	$40	$40*x*
Example 10(ii), p. 31, 1st column, 3rd line	$100	$100*x*
Example 10(ii), p, 31, 1st column, 5th line	$60	$60*x*
Example 10(ii), p. 31, 1st column, 6th line	$40	$40*x*
Example 10(ii), p. 31, 1st column, 9th line	$10	$10*x*
Example 10(ii), p. 31, 1st column, 11th line	$30	$30*x*
Example 10(ii), p. 31, 1st column, 13th line	$20	$20*x*
Example 11(i), p. 31, 2nd column, 7th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 13th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 15th line	$20	$20*x*
Example 11(i), p. 31, 2nd column, 17th line	$100	$100*x*
Example 11(i), p. 31, 2nd column, 31st line	that (i) A's	that A's
Example 11(i), p. 31, 2nd column, 34th line	and (ii) because	and because
Example 11(i), p. 31, 2nd column, 38th line	$80	$80*x*
Example 12(i), p. 31, 3rd column, 7th line	$100	$100*x*
Example 12(i), p. 31, 3rd column, 9th line	$60	$60*x*
Example 12(i), p. 31, 3rd column, 9th line	$40	$40*x*
Example 12(i), p. 31, 3rd column, 12th line	$40	$40*x*
Example 12(i), p. 31, 3rd column, 15th line	$100	$100*x*
Example 12(i), p. 31, 3rd column, 20th line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 21st line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 22nd line	$10	$10*x*
Example 12(i), p. 31, 3rd column, 23rd line	$60	$60*x*
Example 12(i), p. 31, 3rd column, 23rd line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 24th line	$10	$10*x*
Example 12(i), p. 31, 3rd column, 25th line	$50	$50*x*
Example 12(i), p. 31, 3rd column, 25th line	$40	$40*x*
Example 13(i), p. 32, 2nd column, 3rd line	$95	$95x
Example 13(i), p. 32, 2nd column, 4th line	$5	$5x
Example 13(i), p. 32, 2nd column, 10th line	$100	$100*x*
Example 13(i), p. 32, 2nd column, 16th line	$5	$5x
Example 13(i), p. 32, 2nd column, 19th line	$100	$100*x*
Example 13(i), p. 32, 2nd column, 22nd line	$50	$50*x*
Example 13(i), p. 32, 2nd column, 24th line	$5	$5*x*
Example 13(i), p. 32, 2nd column, 24th line	$45	$45*x*

2. On page 33, column 1, § 1.701–2, paragraph (f), paragraph (ii) of *Example 2*, line 20, the language ''corporation Z stock, and the partners must'' is corrected to read ''Corporation Z stock, and the partners must''.

Dale D. Goode,

Federal Register Liaison Ass't Chief Counsel (Corporate).

[FR Doc. 95–3769 Filed 2–21–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 1949–95]

Redelegation of Personnel Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends Department regulations on personnel authorities with respect to Assistant United States Attorneys to specifically allow the Deputy Attorney General to redelegate the authority to take final actions with respect to their appointment, employment, separation, and general administration. The rule is promulgated to clarify the current regulation and reflect the Deputy Attorney General's wide discretion in delegating certain personnel authorities.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Page Newton, Senior Attorney Advisor, Legal Counsel's Office, Executive Office for United States Attorneys, Department of Justice, Room 1644, 10th and Constitution Avenue, NW., Washington, DC 20530; telephone (202) 514–5340.

SUPPLEMENTARY INFORMATION: This order is a matter of internal department management. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. It does not have Federalism implications warranting the preparation of a Federalism assessment in accordance with section 6 of Executive Order 12612. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

For the reasons set forth in the preamble, Title 28, Chapter I, Part 0 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.15 is amended by revising paragraphs (b)(1)(v), (c), and (e) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * *

(b) * * *

(1) * * *

(v) The appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and fixing their salaries.

* * * * *

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1) (i), (ii), (iii), and (v) of this section to take final action in matters pertaining to the employment, separation, and general administration

of attorneys and law students in grades GS–15 and below, to appoint special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b), to appoint Assistant United States Trustees and fix their compensation, and to take final action in matters pertaining to the appointment, employment, separation, and general administration of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and to fix their salaries.

* * * * *

(e) The officials to whom the Deputy Attorney General delegates authority under paragraph (c) of this section and any of the officials who may be otherwise authorized by the Deputy Attorney General to perform any other attorney personnel duties may redelegate those authorities and duties.

* * * * *

Dated: February 9, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–4226 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA24–1–6519a; FRL–5143–7]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves certain regulations of the Northwest Air Pollution Authority (NWAPA) for the control of air pollution in Island, Skagit, and Whatcom Counties, Washington, as revisions to the Washington State Implementation Plan (SIP). These regulations were submitted by the Director of the Washington State Department of Ecology (WDOE) on January 10, 1994. In accordance with Washington statutes, NWAPA rules must be at least as stringent as the WDOE statewide rules.

DATES: This final rule will be effective on April 24, 1995 unless adverse or critical comments are received by March 24, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to:

Montel Livingston, SIP Manager, Air Programs Branch (AT–082), EPA, Docket # WA24–1–6519, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air Programs Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and Washington Department of Ecology, PO Box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT–082), EPA, Region 10, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION

I. Background

On January 10, 1994, the Director of WDOE submitted to EPA Region 10 revised and updated regulations for NWAPA affecting Island, Skagit, and Whatcom Counties. NWAPA and WDOE held joint public hearings on April 14, 1993 and September 8, 1993, to receive public comment on the revisions to NWAPA's rules and the submittal to EPA as a revision to the Washington SIP.

These regulations cover such subjects as the adoption of State laws and rules, criminal and civil penalties, notice of construction procedures, registration classes, volatile organic compounds (VOC) controls, and others (please see Description of Plan Revisions, below). NWAPA requested that the WDOE submit these additions for incorporation into the Washington State SIP in an effort to prepare NWAPA for implementation of the operating permit program. EPA granted interim approval to NWAPA's operating permit program effective December 9, 1994. *See* 59 FR 55813 (November 9, 1994).

II. Description of Plan Revisions

The NWAPA amendments submitted by WDOE on January 12, 1994 for inclusion into the Washington SIP are local air pollution regulations which WDOE has certified are at least as stringent as the statewide rules of the WDOE. This rulemaking action approves portions of NWAPA's regulations related to the control of criteria pollutants under section 110 of the Act. EPA is taking no action on certain other portions of NWAPA's regulation. In this rulemaking, EPA is approving the following sections:

100 Name of Authority
101 Short Title
102 Policy
103 Duties and Powers
104.1 Adoption of State Laws and Rules
105 Separability
106 Public Records
110 Investigation and Studies
111 Interference or Obstruction
112 False and Misleading Oral Statement—Unlawful Reproduction or Alteration of Documents
113 Service of Notice
114 Confidential Information
120 Hearings
121 Orders
122 Appeals from Orders or Violations
123 Status of Orders on Appeal
124 Display of Orders, Certificates, and other Notices—Removal or Mutilation Prohibited
130 Citations—Notices
131 Violation—Notices
132 Criminal Penalty
133 Civil Penalty
134 Restraining Orders—Injunctions
135 Additional Enforcement—Compliance Schedules
140 Reporting by Government Agencies
145 Motor Vehicle Owner Responsibility
150 Pollutant Disclosure—Reporting by Air Contaminant Sources
180 Sampling and Analytical Methods/References
200 Definitions
300 Notice of Construction when Required
301 Information Required for Notice of Construction and Application for Approval, Public Notice, Public Hearing
302 Issuance of Approval or Order
303 Notice of Completion—Notice of Violation
310 Approval to Operate Required
320 Registration Required
321 General Requirements for Registration
322 Exemptions from Registration
323 Classes of Registration
324 Fees (except for section 324.121)
325 Transfer
340 Report of Breakdown and Upset
341 Schedule Report of Shutdown or Startup
342 Operation and Maintenance
360 Testing and Sampling
365 Monitoring
366 Instrument Calibration
400 Ambient Air Standards—Forward
401 Suspended Particulate Standards (PM–10)
410 Sulfur Oxide Standards
420 Carbon Monoxide Standards
421 Nitrogen Oxide Standards
424 Ozone Standard
450 Emission Standards—Forward
451 Emission of Air Contaminant—Visual Standard
452 Motor Vehicle Visual Standards (except for section 452.5.)
455 Emission of Particulate Matter
458 Incinerators—Wood Waste Burners
460 Weight/Heat Rate Standard—Emission of Sulfur Compounds
462 Emission of Sulfur Compounds
466 Portland Cement Plants

510 Incinerator Burning
520 Sulfur Compounds in Fuel
550 Preventing Particulate Matter from Becoming Airborne
560 Storage of Organic Liquid
580 Volatile Organic Compound Control

The following discussion highlights elements of NWAPA's rules that EPA is approving: Section 104.1—Adoption of State Laws and Rules, allows NWAPA to position itself as the primary enforcement agency for the three counties under its jurisdiction. Sections 132 and 133—Criminal Penalty and Civil Penalty, respectively, reflect changes in Washington's Clean Air Act. Maximum fines have increased from $1,000 to $10,000, and civil penalties have been adjusted based on the consumer price index. Timely submittal of information on emissions is the subject of Section 150, which states that if industries do not comply in a timely fashion, fees will be based on potential rather than actual emissions. Sections 300 through 310 establish a preconstruction review program which requires the submittal of a ''Notice of Construction and Application for Approval'' and receipt of an ''Order of Approval'' prior to the construction or modification of most air contaminant sources. An ''Order of Approval'' will be issued after public notice and opportunity for comment, if applicable, provided the new or modified source complies with all applicable State and Federal requirements. Note, however, that the NWAPA regulations do not contain any provisions to implement the major source permitting requirements of Title I, Part C, and Part D of the Act. There are currently no nonattainment areas in NWAPA's jurisdiction and the WDOE implements the Part C ''Prevention of Significant Deterioration'' permit program under a delegation from EPA. Sections 320 through 325 require the registration of air contaminant sources, and impose an annual registration fee and other fees to cover the costs of regulating sources. ''Preventing Particulate Matter from Becoming Airborne,'' Section 550, aims at preventing material from being deposited in public roadways that may result in fugitive dust problems. Volatile organic compounds (VOCs) are controlled by Section 580, which establishes BACT for all new VOC sources. This section covers petroleum refineries, high vapor pressure volatile organic compound storage tanks, gasoline loading terminals, bulk gasoline plants, gasoline stations, cutback asphalt paving, petroleum refinery equipment leaks, high vapor pressure volatile organic compound storage in external floating roof tanks, leaks from gasoline transport tanks and vapor control systems.

Finally, EPA is taking no action on the following sections which were included in the January 10, 1994 submittal but do not relate to the control of criteria air pollutants under section 110 of the Act.

104.2 Adoption of Federal rules
312 Environmental Policy Guidelines
324.121 Fees (operating permits)
326 Operating Permits
350 Variances
402 Particulate Fallout Standards
426 Hydrocarbons
428 Hazardous Air Pollutants
452.5 Motor vehicle standards for odor
465 Sulfuric Acid Plants
470 Fluorides
600 to 603 Objectives and Planning Criteria

In its January 10, 1994 submission, NWAPA did not submit its rules regarding open burning (Section 501—Outdoor Burning; Section 504—Outdoor Fires—Grass Seed Fields; Section 511—Refuse Burning Equipment—Time Restriction) and for concealment and masking (Section 540—Emission of Air Contaminant—Concealment and Masking) for inclusion in the SIP. Therefore, the statewide rules for open burning and concealment and masking apply within NWAPA's jurisdiction.

III. Summary of EPA Action

In this action, EPA approves the following sections of the NWAPA rules as revisions to the Washington SIP: 100, 101, 102, 103, 104.1, 105, 106, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 130, 131, 132, 133, 134, 135, 140, 145, 150, 180, 200, 300, 301, 302, 303, 310, 320, 321, 322, 323, 324, 325, 340, 341, 342, 360, 365, 366, 400, 401, 410, 420, 421, 424, 450, 451, 452 (except for 452.5.), 455, 458, 460, 462, 466, 510, 520, 550, 560, and 580.

IV. Administrative Review

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

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

The EPA is publishing this action without prior proposal because the Agency 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. This action will be effective April 24, 1995 unless, by March 24, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will 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 action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 24, 1995.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

This action has been classified as a Table 3 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 OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: January 9, 1995.

Chuck Clarke,

Regional Administrator.

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

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (50) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(50) By a letter dated December 29, 1993, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the Washington SIP updating the regulations from the Northwest Air Pollution Authority.

(i) Incorporation by reference.

(A) The December 29, 1993 letter from the Director of the Washington State Department of Ecology submitting the Northwest Air Pollution Authority Regulations as a revision to the Washington SIP.

(B) Regulations of the Northwest Air Pollution Authority—sections 100, 101, 102, 103, 104.1, 105, 106, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 130, 131, 132, 133, 134, 135, 140, 145, 150, 180, 200, 300, 301, 302, 303, 310, 320, 321, 322, 323, 324, 325, 340, 341, 342, 360, 365, 366, 400, 401, 410, 420, 421, 424, 450, 451, 452 (except for 452.5.), 455, 458, 460, 462, 466, 510, 520, 550, 560, and 580, effective on September 8, 1993.

[FR Doc. 95–3862 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300366A; FRL–4925–1]

RIN 2070–AB78

Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranyl-N-Methylcarbamate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the insecticide 2,3-dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate (common name ''carbofuran'') and its metabolites in or on canola at 1.0 part per million (ppm) with an expiration date of 2 years after the beginning of the effective date of the rule. EPA is issuing this rule on its own initiative.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300366A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 8, 1994 (59 FR 55605), EPA issued a proposed rule that gave notice that on its own initiative and under section 408(e) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(e), it proposed a time-limited tolerance for the residues of carbofuran and its metabolites in or on canola at 1.0 ppm. EPA proposed a tolerance because State registrations for the use of carbofuran on canola exist. However, because of EPA's continuing concern for the risk to birds posed by carbofuran use, the Agency is limiting the number of States in which granular carbofuran may be used on canola, and may take regulatory action in the near future to further restrict carbofuran use. Additional registrations will not be permitted until EPA has reached a decision on whether the canola use poses unreasonable risks to birds and wildlife and whether additional restrictions are necessary. The Agency intends to conduct the necessary risk and benefit assessments and anticipates a decision before the 1996 use season.

There are three Special Local Need registrations under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136v(c). Registrations associated with this time-limited tolerance will be regionally restricted to Idaho, Minnesota, Montana, North Dakota, and Washington.

The use of granular carbofuran under this tolerance will be limited to the 1995 growing season because additional residue data have to be submitted for the Agency to make its determination that the tolerance will be protective of the public health. As discussed in the proposed rule, the reference dose is exceeded for nonnursing infants and children ages 1 to 6 if it is assumed that all canola will contain tolerance level residues. EPA believes this assumption overstates the risk. EPA has requested additional data to confirm its view that the risk estimate is overstated. The Interregional Research Project No. 4 (IR-4) is currently conducting residue trials in the U.S. and plans to submit a petition for a permanent tolerance in the spring. EPA will not establish a permanent tolerance until it has received and evaluated the residue data.

Over 100 comments were received in response to the proposed rule. All were in support of establishing the tolerance.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the time-limited tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections and the relief sought (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.254, by adding new paragraph (c), to read as follows:

§ 180.254 2,3-Dihydro-2,2-dimethyl-7-benzofuranyl-N-methylcarbamate; tolerances for residues.

* * * * *

(c) A time-limited tolerance, to expire on February 22, 1997, with regional registration, as defined in § 180.1(n), is established for the combined residues of the insecticide carbofuran (2,3-dihydro-2,2-dimethyl-7-benzofuranyl-*N*-methylcarbamate), its carbamate metabolite, 2,3-dihydro-2,2-dimethyl-3-hydroxy-7-benzofuranyl-*N*-methylcarbamate, and its phenolic metabolites 2,3-dihydro-2,2-dimethyl-7-benzofuranol, 2,3-dihydro-2,2-dimethyl-3-oxo-7-benzofuranol and 2,3-dihydro-2,2-dimethyl-3,7-benzofurandiol in or on the following raw agricultural commodity:

Commodity	Parts per million
Canola (of which no more than 0.2 ppm is carbamate)	1.0

[FR Doc. 95–4303 Filed 2–16–95; 2:39 pm]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300372A; FRL–4933–5]

RIN 2070–AB78

Acrylamide-Potassium Acrylate-Acrylic Acid Copolymer, Crosslinked; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acrylamide-potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Kelly Products, Inc., requested this rule.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections, identified by the document control number, [OPP-300372A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1994 (59 FR 61302), EPA issued a proposed

rule that gave notice that Kelly Products, Inc., P.O. Box 1508, 4132 Highway 278, NW., Covington, GA 30209, had submitted pesticide petition (PP) 4E4348 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of acrylamide potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2) when used as an inert ingredient (carrier) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 1, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Acrylamide potassium acrylate-acrylic acid copolymer, crosslinked (CAS Reg. No. 31212-13-2), minimum number average molecular weight 1,000,000.	.....	Carrier
* * *	* *	* *

* * * * *

[FR Doc. 95–4304 Filed 2–16–95; 2:39 pm]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 3F4169 and FAP 3H5655/R2090; FRL–4937–3]

RIN 2070–AB78

Pesticide Tolerance for Imidacloprid; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: EPA is issuing a technical amendment to a final rule on the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites to designate the tolerance for hops as a time-limited tolerance and to correct a typographical error in an expiration date for a tolerance for cottonseed.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis H. Edwards, Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-3686.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1994 (59 FR 61278), EPA revised 40 CFR 180.472 and removed the time-limited designation for commodities listed in paragraph (a). The listing ''Hops, dried'' at 3.0 ppm inadvertently was left in paragraph (a) in the new list of commodities without a time-limited designation, but hops should have retained the time-limited designation, June 28, 1995, and been moved to a new paragraph. EPA is rectifying this oversight by designating the time-limited tolerance for hops in new paragraph (d) under 40 CFR 180.472. Also, in the November 30, 1994 document (59 FR 61278), a typographical error in 40 CFR 180.472(b), i.e., the November 17, 1994 time-limited designation, is corrected to read ''November 17, 1996''. The November 17, 1996 expiration date was specified in the preamble of the document, and its is correctly stated in the time-limited tolerance for cottonseed meal in 40 CFR 186.900(b) in the same document.

This document contains corrections and technical amendments only and does not require notice and comment, 5 U.S.C. 553.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, a technical amendment is made to 40 CFR part 180 as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.472, by amending paragraph (a) in the table therein by removing the listing ''Hops, dried'', by amending paragraph (b) in the introductory text by changing the date ''November 17, 1994'' to read ''November 17, 1996'', and by adding new paragraph (d), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(d) A time-limited tolerance, to expire June 28, 1995, is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl)-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Hops, dried	3.0

[FR Doc. 95–4184 Filed 2–21–95; 8:45 a.m.]

BILLING CODE 6560–50–F

40 CFR Parts 180, 185, and 186

[PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/R2106; FRL–4933–4]

RIN 2070–AB78

Pesticide Tolerances for Permethrin, Cypermethrin, Fenvalerate/ Esfenvalerate, Tralomethrin, Fenpropathrin, Cyfluthrin, and Lambda-Cyhalothrin; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for residues of seven synthetic pyrethroids—permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, fenpropathrin, cyfluthrin, and lambda-cyhalothrin (collectively referred to as the synthetic pyrethroids)—in or on certain raw agricultural commodities. FMC Corp. (FMC), Zeneca Ag Products, E.I. DuPont de Nemours & Co., Inc., Hoechst-Roussel Agri-Vet Co., Miles, Inc., and Valent U.S.A Corp., collectively called the industry's Pyrethroid Working Group (PWG), requested this rule to extend the effective date for tolerances for maximum permissible levels of residues of these synthetic pyrethroids in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective February 22, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number [PP 8F2034, 7F2013, 4F2993, 2F2623, 4F3046, 2F4144, and 6F3318/R2106], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7605C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product

Manager (PM) 22, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-6100).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 14, 1994 (55 FR 56454), EPA issued a proposed rule to extend to November 15, 1997, tolerances for the residues of the synthetic pyrethroids permethrin, cypermethrin, fenvalerate/esfenvalerate, tralomethrin, fenpropathrin, cyfluthrin, and lambda-cyhalothrin in or on certain commodities. The PWG had submitted petitions to establish tolerances for the synthetic pyrethroids. The data submitted in support of the tolerances and other relevant materials have been reviewed.

The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of April 25, 1979 (44 FR 24287) for permethrin, January 31, 1979 (44 FR 6098) for fenvalerate, September 18, 1985 (50 FR 37581) for tralomethrin, February 21, 1985 (50 FR 7172) for cypermethrin, January 25, 1988 (53 FR 1923) for cyfluthrin, April 14, 1993 (58 FR 19357) for fenpropathrin, and May 24, 1988 (53 FR 18558) for lambda-cyhalothrin.

To be consistent with extensions issued for conditional registrations that have been issued, the Agency is amending and extending tolerances for the synthetic pyrethroids with an expiration date of November 15, 1997, to cover residues expected to result from use during the period of conditional registration.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rule.

Therefore, based on the information considered by the Agency and discussed in detail in the proposed rule and based on the Agency's conclusion that the tolerances for residues of the synthetic pyrethroids in or on the commodities will protect the public health, the Agency is establishing the tolerances as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Records and recordkeeping.

Dated: February 1, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.378, by revising the introductory text of paragraph (a), to read as follows:

§ 180.378 Permethrin; tolerances for residues.

(a) Tolerances, to expire on November 15, 1997, are established for residues of the insecticide permethrin [(3-pheoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in or on the following raw agricultural commodities:

* * * * *

c. In § 180.379, by amending the table in paragraph (a) by revising the footnote to the entry for cottonseed as follows:

§ 180.379 Cyano(3-phenoxy-phenyl)methyl-4-chloro-α-(1-methylethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cottonseed	[1]0.2
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1997.

* * * * *

§ 180.418 [Amended]

d. By amending § 180.418 *Cypermethrin; tolerances for residues* in

the introductory text by changing ''November 15, 1994'' to read ''November 15, 1997''.

e. In § 180.422, by revising the introductory text to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R,3R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following raw agricultural commodities:

* * * * *

§ 180.436 [Amended]

f. In § 180.436 *Cyfluthrin; tolerances for residues*, by amending the entry for cottonseed in the table therein by amending the footnote to the entry by changing ''November 15, 1994'' to read ''November 15, 1997''.

g. In § 180.438 by amending the table therein by revising the footnote to the entry for cottonseed as follows:

§ 180.438 [1 α-(S*),3 α-(Z)]-(±)-cyano(3-phenoxyphenyl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Cottonseed	[1]0.05
* * * * *	

[1]The tolerance for cottonseed expires on November 15, 1997.

h. In § 180.466, by revising the table therein, to read as follows:

§ 180.466 Fenpropathrin; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed	1.0	Nov. 15, 1997.
Cattle, fat	0.02	Do.
Cattle, mbyp	0.02	Do.
Cattle, meat	0.02	Do.
Eggs	0.02	Do.
Goats, fat	0.02	Do.
Goats, mbyp	0.02	Do.
Goats, meat	0.02	Do.
Hogs, fat	0.02	Do.
Hogs, mbyp	0.02	Do.
Hogs, meat	0.02	Do.
Horses, fat	0.02	Do.
Horses, mbyp	0.02	Do.
Horses, meat	0.02	Do.
Milkfat (reflecting 0.02 ppm in whole milk)	0.03	Do.
Poultry, fat	0.02	Do.
Poultry, mbyp	0.02	Do.
Sheep, fat	0.02	Do.
Sheep, mbyp	0.02	Do.
Sheep, meat	0.02	Do.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. In § 185.1250, by revising paragraph (a), to read as follows:

§ 185.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1997, of 2 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate; CAS Reg. No. 69359-37-5) in cottonseed oil resulting from application of the insecticide to cottonseed.

* * * * *

c. In § 185.3225, by revising the table therein, to read as follows:

§ 185.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed oil	3.0	Nov. 15, 1997.

d. In § 185.5450, by revising the introductory text to read as follows:

§ 185.5450 Tralomethrin.

Tolerances, to expire on November 15, 1997, are established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

* * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.1250, by revising paragraph (a), to read as follows:

§ 186.1250 Cyfluthrin.

(a) A tolerance, to expire on November 15, 1997, of 2.0 parts per million is established for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate (CAS Reg. No. 69359-37-5)) in cottonseed hulls resulting from application of the insecticide to cottonseed.

* * * * *

c. By amending § 186.3225 by revising the table therein, to read as follows:

§ 186.3225 Fenpropathrin.

* * * * *

Commodity	Parts per million	Expiration date
Cottonseed hulls	2.0	Nov. 15, 1997.

[FR Doc. 95–4305 Filed 2–16–95; 2:39 pm]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Parts 12 and 18

Administrative Requirements and Cost Principles for Assistance Programs—Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants); New Restrictions on Lobbying

AGENCY: Office of the Secretary, Interior.

ACTION: Notification of policy change.

SUMMARY: This document announces a change in Departmental policy concerning the acceptance of certification regarding nonprocurement debarment and suspension for primary and lower tier covered transactions; drug-free workplace requirements; and lobbying, including the statement for loan guarantees and loan insurance. Since the use of special Departmental forms to meet regulatory requirements was a statement of Departmental policy, and not regulatory, the Department is using this document to inform potential applicants for grants, cooperative agreements, and loans to the revised policy. This change is in keeping with the philosophies of the National Performance Review to streamline processes. The effect of this change is to allow applicants, at the instruction of the Departmental bureau or office, to use any forms or formats, including electronic equivalents, as long as the certification or statement contains the applicable language required by the regulation.

EFFECTIVE DATE: This policy change is effective on February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, (Chief, Acquisition and Assistance Division), (202) 208–6431.

SUPPLEMENTARY INFORMATION: The Department jointed in the publication of the Final Rule on Nonprocurement Debarment and Suspension published on May 26, 1988 (53 FR 19161–19211). To implement the certification requirements for participants in primary and lower tier covered transactions included in 43 CFR 12.510 (a) and (b), the Department developed two Departmental forms for use, specifically, DI–1953 (9/88), ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions,'' and DI–1954 (9/88), ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.'' The certification language used in these forms was the same as that appearing in Appendices A and B to Subpart D of 43 CFR Part 12.

With the publication of the Final Rule on Drug-Free Workplace Requirements published on May 25, 1990 (55 FR 21681–21705), the Department adopted a similar approach to implement the certification requirements required by 43 CFR 12.630(a). Specifically, DI–1955 (May 1990), ''Certification Regarding Drug-Free Workplace Requirements'' was developed for grantees other than individuals, and DI–1956 (May 1990), ''Certification Regarding Drug-Free Workplace Requirements,'' was developed for grantees who are individuals. The certification language used in these forms was also the same as that appearing in Appendix C to Subpart D of 43 CFR Part 12.

The Interim Final Rule on New Restrictions on Lobbying was published on February 6, 1990 (55 FR 6735–6756). As part of its agency-specific preamble, the Department identified two Departmental forms to be used for implementing the lobbying certification and statement requirements included in 43 CFR 18.100 (b) and (d), specifically, DI–1963 (Jan 90), ''Certification Regarding Lobbying Form,'' and DI–1962 (Jan 90), ''Statement for Loan Guarantees and Loan Insurance Form.''

This policy change will increase the flexibility of the Departmental bureaus and offices for meeting these requirements and will accommodate particular needs of applicants that have the capability of using other methods to provide the certifications or statement. Departmental bureaus and offices will retain the option to continue accepting the existing forms and any subsequent revisions, a consolidated version of the forms, an electronic equivalent, forms of other Federal agencies, if appropriate, or forms prepared by automated systems of applicant organizations as long as the certification or statement contains the applicable language required by the regulation.

In some instances, the certification instructions found on the existing forms may no longer be included in program announcements. Potential applicants needing instructions for completion of a certification may refer to the published regulation or may request printed instructions from the individual named in the specific program announcement or publication.

Dated: January 31, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 95–4288 Filed 2–21–95; 8:45 am]
BILLING CODE 4310–RF–M

FEDERAL MARITIME COMMISSION

46 CFR Part 500

[Docket No. 95–04]

Employee Responsibilities and Conduct

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (''Commission'' or ''FMC''), is repealing its existing agency

standards of conduct regulations that have been superseded by the branch-wide Standards of Ethical Conduct issued by the Office of Government Ethics (''OGE'') and by the executive branch financial disclosure regulations. In place of its regulations, the FMC is substituting cross-references to the new branch-wide regulations.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: David R. Miles, Designated Agency Ethics Official, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On November 6, 1984, the Federal Maritime Commission adopted administrative regulations governing employee responsibilities and conduct; statements of employment and financial interests; and executive personnel financial disclosure reports. *See* 46 CFR part 500, subpart A, B, C, and D. On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch (''Standards'') for codification at 5 CFR part 2635. *See* 57 FR 35006–35007, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992). The Standards, effective February 3, 1993, contain uniform ethical conduct standards applicable to all executive branch personnel, and supersede all existing agency standards of conduct.

Accordingly, the Commission is repealing its existing standards of conduct regulations at 46 CFR Part 500, Subparts A, B, and C, which were superseded by the executive branch-wide Standards on February 3, 1993. In addition, Subpart D of Part 500, dealing with financial disclosure, was also superseded on October 5, 1992, by OGE's executive branch-wide financial disclosure regulation, codified at 5 CFR Part 2634. *See* 57 FR 11800–11830 (April 7, 1992), as amended at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). In place of its old standards at 46 CFR part 500, the Commission is issuing a residual cross-reference provision, at new 46 CFR 500.101, to refer to both the branch-wide Standards and financial disclosure regulations. The Commission has determined not to supplement the standards with its own agency-specific standards.

The Commission finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this rule and repeals. This rulemaking is related to the Commission's organization, procedure and practice.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions, because it affects only Commission employees.

List of Subjects in 46 CFR Part 500

Conflict of interests, Government employees.

For the reasons set forth above, the Federal Maritime Commission, in concurrence with the Office of Government Ethics, is amending title 46, Subchapter A of the Code of Federal Regulations, by revising Part 500 to read as follows:

PART 500—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

Authority: 5 U.S.C. 553; 5 U.S.C. 7301; 46 U.S.C. app. 1716.

§ 500.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Federal Maritime Commission (''FMC'') should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4238 Filed 2–21–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89–552; DA 95–251]

Use of the 220–222 MHz Band by the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Interpretation; Extension of compliance date.

SUMMARY: Non-nationwide 220–222 MHz licensees are currently required to construct their stations and place them in operation by April 4, 1995. Recently, however, the Commission has received requests from manufacturers of 220–222 MHz radio equipment to extend this deadline. The manufacturers indicate that an extension is necessary because they will not be able to deliver radio equipment to many licensees in time to enable them to construct their stations by April 4, 1995. The Wireless Telecommunications Bureau agrees that some measure of relief should be afforded to non-nationwide 220–222 MHz licensees and has therefore adopted this Order extending the deadline to December 31, 1995 for all non-nationwide 220–222 MHz licensees to construct their stations and place them in operation.

DATES: Compliance date extended to December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martin D. Liebman, Policy Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 16, 1995
Released: February 17, 1995

By the Chief, Wireless Telecommunications Bureau:

1. On August 19, 1994. the Private Radio Bureau released a Public Notice (DA 94–902) [1] extending the deadline for construction of non-nationwide 220 MHz stations from December 2, 1994 to April 4, 1995.[2] The Commission, in the *Third Report and Order,* GN Docket No. 93–252, Implementation of Sections 3(n) and 332 of the Communications Act, released September 23, 1994, 9 FCC Rcd 7988 (1994) 59 FR 59945, November 21, 1994, again identified April 4, 1995 as the construction deadline for non-nationwide 220 MHz stations. In that decision, the Commission noted that the extension ''gives these licensees approximately 12 months from the date of * * * [the March 30, 1994 *Order*] * * * to complete construction and commence operations. * * *'' [3]

2. Recently, the Wireless Telecommunications Bureau received

[1] The responsibility for licensing the 220 MHz radio service now resides in the Wireless Telecommunications Bureau.

[2] (59 FR 15857, April 5, 1994). The December 2, 1994 deadline was announced in a Private Radio Bureau *Order* released on March 30, 1994 (*see* 9 FCC Rcd 1739 (1994)). In that *Order*, the Bureau, citing the court appeal challenging the Commission's 220 MHz licensing procedures (*see Evans v. Federal Communications Commission,* Order, per curiam, Case No. 92–1317 (D.C. Cir. March 18, 1994)) decided that, upon termination of the appeal, all non-nationwide 220 MHz licensees would be afforded the full 8 months provided under our rules (*see* 47 C.F.R. § 90.725(f)) to construct and operate their stations. The December 2, 1994 deadline reflected the approximate 8-month period following the March 30, 1994 release of the *Order.*

[3] *See* 9 FCC Rcd 8077 (1994).

requests from three 220 MHz radio equipment manufacturers to extend the current construction deadline beyond April 4, 1995. The first of these was submitted by SEA, Inc. (SEA) in a letter sent to Regina M. Keeney, Chief, Wireless Telecommunications Bureau, on January 17, 1995. SEA asks that the deadline be extended to December 31, 1995 for those licensees who have, by placing equipment orders with manufacturers, demonstrated their intent to construct their 220 MHz stations. SEA argues that this extension is needed because the manufacturing capacity of the companies producing 220 MHz equipment ''is not sufficient to fill existing orders by the April 4 deadline'' and that those licensees who have placed orders ''should not be required to forfeit their licenses'' due to manufacturers' inability to deliver equipment by that date. As further support for its request, SEA contends that the *Evans v. FCC*[4] court appeal caused licensees to delay placing orders, and that, upon dismissal of the appeal, manufacturers were required suddenly to deliver equipment by a ''single, across-the-board'' deadline applicable to all licensees. SEA observes that, had the court case not occurred, manufacturers would have had to satisfy the less difficult requirement of filling orders to meet the progressive 8-month construction deadlines of the approximately 3,600 individual stations that were authorized over an extended period.

3. E.F. Johnson Company (EFJ), another 220 MHz equipment manufacturer, in a letter sent to Regina M. Keeney on January 25, 1995, supports SEA's request for an extension until December 31, 1995 for those 220 MHz licensees who have timely placed an equipment order with a manufacturer offering type-accepted equipment. EFJ argues that the current ''compressed manufacturing and delivery schedule can simply not be met, even with the considerable resources [the company] will commit to the process'' and contends that if an extension is not granted, the Commission will ''irreparably harm the nascent 220 MHz industry and seriously set back efforts to employ spectrum efficient narrowband technology on a widespread basis.''

4. Finally, the third manufacturer, Linear Modulation Technology Limited (LMT), a wholly-owned subsidiary of the Securicor Group plc, in a letter sent to Regina M. Keeney on February 1, 1995, also expresses support for the granting of an extension to December 31, 1995. LMT claims that, while it will be able to construct a significant number of 220 MHz systems by the April 4, 1995 deadline, it will not be able to deliver and construct by that date many of the orders for the ''approximately one thousand full systems that licensees or managers of 220 MHz systems have attempted to place with LMT.'' LMT contends that, if those licensees who have tried to construct their systems by the deadline lose their licenses due to the unavailability of equipment, the prospects for the successful deployment of the 220 MHz service ''will significantly diminish'' and the U.S. 220 MHz industry will be placed ''in serious jeopardy.''[5]

5. The manufacturers of 220 MHz equipment have indicated that, despite their best efforts, equipment ordered by many non-nationwide 220 MHz licensees will not be delivered in time to enable such licensees to construct their stations by April 4, 1995. The Bureau believes that these licensees should be afforded some measure of relief from the current construction deadline. The Bureau is also concerned that a number of licensees, aware of manufacturers' production difficulties, have delayed the placement of orders or have chosen not to place orders at all under the assumption that the orders could not be filled by April 4, 1995. Therefore, to provide relief to all licensees—those that have placed orders as well as those that must still do so—the Bureau extends to December 31, 1995 the deadline for nonnationwide 220 MHz licensees to construct their stations and place them in operation.

6. Accordingly, for good cause shown, *It is Ordered That* the requests by SEA Inc., E.F. Johnson Company, Linear Modulation Technology Limited and other parties for extension of the deadline for construction of non-nationwide 220 MHz stations are *Granted* to the extent indicated herein and otherwise denied.

Federal Communications Commission.

Regina M. Keeney,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 95–4381 Filed 2–21–95; 8:45 am]

BILLING CODE 6712–01–M

[4] *See* footnote 2, *supra.*

[5] In addition to the letters received from these equipment manufacturers, certain other interested parties, including 220 MHz licensees, have submitted requests to the Wireless Telecommunications Bureau asking for construction deadline extensions of up to three years.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends the delegations of authority within the National Highway Traffic Safety Administration by transferring, from the Associate Administrator for Enforcement to the Director, Office of Vehicle Safety Compliance, the responsibility for granting and denying petitions for import eligibility decisions that are submitted to the agency under 49 U.S.C. 30141(a)(1) (formerly section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)).

EFFECTIVE DATE: This delegation is effective as of February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of the Chief Counsel (NCC–10), National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION:

This notice amends the delegations of authority within the National Highway Traffic Safety Administration (NHTSA) to reflect the transfer of responsibilities from NHTSA's Associate Administrator for Enforcement to one of the Associate Administrator's subordinates, the Director of the Office of Vehicle Safety Compliance. Under the existing delegations of authority, the Associate Administrator for Enforcement is responsible for the ''[g]ranting and denying of petitions for import eligibility determinations submitted to the NHTSA by motor vehicle manufacturers and registered importers * * *.'' 49 CFR 501.8(g)(3). Regulations establishing the procedures for making these determinations are found at 49 CFR part 593.

Those regulations implement 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the Act), which provides that a motor vehicle 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 it 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. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable safety standards.

Under 49 U.S.C. 30141(a) (formerly section 108(c)(3)(C)(i) of the Act), these import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under (49 U.S.C. 30141(c).'' The Secretary's authority to make these determinations is delegated to the Administrator of NHTSA under 49 CFR 1.50(a). The Administrator, in turn, delegated to the Associate Administrator for Enforcement, under 49 CFR 501.8(g)(3), the responsibility for granting and denying petitions for import eligibility determinations submitted to the agency by registered importers and manufacturers.

This notice transfers these responsibilities to the Director of NHTSA's Office of Vehicle Safety Compliance. This transfer will eliminate one level of management review for these actions, thereby reducing the processing time for the petitions and some of the costs associated with the importation of the vehicles to which the petitions relate.

The amendment made through this notice relates solely to the organization and assignment of duties within the agency, and has no substantive regulatory effect. It is therefore not subject to the notice and comment and the effective date requirements of the Administrative Procedure Act. This amendment is also not subject to the requirements of Executive Order 12866 or to the Department of Transportation's regulatory policies and procedures. Notice and the opportunity for public comment are therefore not required, and this amendment is effective immediately upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 501

Authority, Delegations.

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. secs. 105 and 322; delegation of authority at 49 CFR 1.50.

2. Section 501.8 is amended by removing paragraph (g)(3), and by adding a new paragraph (l), to read as follows:

§ 501.8 Delegations.

* * * * *

(l) *Director, Office of Vehicle Safety Compliance, Enforcement.* The Director, Office of Vehicle Safety Compliance, Enforcement, is delegated authority to exercise the powers and perform the duties of the Administrator with respect to granting and denying petitions for import eligibility decisions submitted to the NHTSA by motor vehicle manufacturers and registered importers under 49 U.S.C. 30141(a)(1).

Issued on: February 15, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–4264 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

RIN 0580–AA14

United States Standards for Corn

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: In its periodic review of existing regulations, the Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), proposes to amend the U.S. Standards for Corn to: Report test weight (TW) to the nearest tenth of a pound, eliminate the count limit on stones and reduce the U.S. Sample grade aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight, and offers stress crack testing as official criteria. This proposed rule is intended to facilitate the marketing of corn.

DATES: Comments must be submitted on or before April 24, 1995.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623–S, P.O. Box 96454, Washington, DC 30090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection at Room 0623 South Building, 1400 Independence Avenue, SW., Washington, DC during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is exempt from Executive Order 12866 review.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. the United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act Certification

James Robert Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

Background

During October 1993, the Federal Grain Inspection Service (FGIS), prepared a discussion paper concerning the U.S. Standards for Corn. This paper addressed a number of issues relating to the standards and was distributed throughout the grain industry. The paper also served as a starting point for discussions with producers, trade associations, processors, handlers, and merchandisers to better understand their views on changes needed to improve existing standards. FGIS received positive feedback from the grain industry regarding the corn discussion paper; and, in fact, numerous industry representatives suggested that FGIS continue to develop and distribute similar documents before amending other standards.

FGIS received a total of 12 written comments concerning the discussion paper: 3 from research associations and universities, 1 from a producer organization, 4 from handler and processor associations, 1 from an industry consortium, 2 from grain inspection and weighing associations, and 1 from a grain company. In addition to receiving written comments, FGIS reviewed the corn standards with representatives of the Iowa Department of Agriculture, the Grain Quality Workshops, and other corn-related associations.

On the basis of all comments and other available information, FGIS is proposing three changes to the corn standards that reflect current market needs and also serve to improve the effectiveness of the standards. The proposed amendments include: (1) Reporting TW to the nearest tenth of a pound, (2) eliminating the count limit on stones and reducing the U.S. Sample grade aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight, and (3) offering stress crack testing as official criteria.

Test Weight (TW)

FGIS proposes to revise § 810.102(d) of the United States Standards for Grain to report TW in corn to the nearest tenth of a pound. This change will bring the reporting requirement for TW into line with the reporting requirements for other factors, such as total damaged kernels and broken corn and foreign material (BCFM).

This is not the first time that FGIS has proposed to revise the reporting requirement for TW in corn. In 1986, (51 FR 35224) to promote greater uniformity among the grain standards, FGIS proposed to reformat the grain standards and solicited comments regarding certification requirements for factors not expressed to the nearest tenth. FGIS proposed to report all percentages (except ergot) and all TW values to the nearest tenth. The proposal included TW in corn which is certified in whole and half pounds with fractions of a half pound disregarded.

The majority of commentors who opposed the proposal indicated that sufficient data were not available to determine how a change in reporting requirements would affect reproducibility of results—especially for TW in coarse grains. FGIS decided not to revise the reporting requirements, except for dockage in wheat (52 FR 24414). FGIS does offer, upon request, the recording of TW results to the nearest tenth pound in the Remarks section of the grade certificate.

An extensive review of FGIS grain inspection and monitoring data, which represent over 4,200 samples, provides standard deviation values for each of the mandatory factors across all grade levels within the corn standards. Standard deviation is a measure of variation; and a particular type of standard deviation, the standard deviation of the difference (SDD), can be used as a measure of reproducibility. When a sample is reanalyzed for a particular factor, the reproducibility of results improves as the SDD becomes smaller.

The review of inspection data resulted in separate SDD values for each grade level for both domestic and export corn samples. Only the export SDD values, however, were calculated from raw TW data reported to the nearest tenth of a pound. Comparison of SDD values between factors will therefore focus on the export values. For TW, the SDD value was the same, 0.366, for all grade levels, thus indicating an insignificant range and a consistent reproducibility in TW values across all grade levels. For damaged kernels total (DKT), the SDD values ranged from 0.853 to 1.814 for U.S. Grade Nos. 1 to 5. For BCFM, the corresponding values ranged from 0.197 to 0.359 for U.S. Grade Nos. 1 to 5. The range in SDD values reflects the range in DKT and BCFM levels and the variance in the reproducibility of results across grade levels.

The TW SDD values are either close to or lower than the SDD values for the other factors when all raw data used in the calculation of the SDD values had been reported to the nearest tenth. It can be inferred from SDD values that the reporducibility of TW results is similar to or better than the reproducibility of DKT and BCFM results. The industry accepts the current practice of reporting DKT and BCFM results to the nearest tenth. Therefore, based on the comparison of SDD values, the industry may also find the reporting of TW to the nearest tenth of a pound acceptable.

Another consideration for the industry is that virtually all TW results are currently rounded down. For example, under the current reporting method, a scale reading 53.99 pounds per bushel is certified as 53.5 pounds per bushel which would meet the TW grade limit for U.S. No. 3 corn. If the results, however, were rounded to the nearest tenth of a pound, the resultant 54.0 pounds per bushel would meet the grade limit for U.S. No. 2 corn. In general, the current practice of rounding down causes TW to almost always be underrepresented throughout the marketing channel. Furthermore, the rounding of TW results to the nearest tenth of a pound will not significantly affect the assigned grade, since in most cases the rounded result will fall within the grade requirement.

Stones

FGIS proposes to eliminate the count limit on stones and reduce the aggregate weight tolerance from more than 0.2 percent by weight to more than 0.1 percent by weight. Stones have a harmful effect on corn quality and milling. Several industry representatives have requested that the count limit on stones be eliminated and the aggregate weight tolerance be reduced from more than 0.2 percent by weight to more than 0.1 percent by weight. The elimination of the count limit would serve to further tighten the tolerance of stones by allowing a smaller number of heavy stones to downgrade a sample.

Stress Crack Testing

FGIS proposes to offer corn stress crack (SC) testing as official criteria under the United States Grain Standards Act. This testing service will be optional and FGIS will recover the cost of providing this service through the applicable inspection fees as set forth in section 800.71(a) of the regulations.

Corn kernels which contain stress cracks tend to break apart, and, as a result, are undesirable in the corn dry milling, wet milling, and food manufacturing processes. In the dry milling process, cracked kernels yield lower percentages of large flaking grits which are the highly valued prime product (ref. 1). Starch recovery, which is an essential component of the wet milling process, is also lower from kernels possessing numerous stress cracks. To the food manufacturer, stress cracks are of concern because of the adverse effect on soaking which is an essential component of the manufacturing process. Some snack food companies currently limit the percent of kernels with stress cracks to values less than 20 percent (ref. 2). Cracked corn is also more difficult to store than undamaged corn, since cracked corn is more readily attacked by microorganisms and is difficult to aerate uniformly.

Cracked corn could also contribute to increased elevator dust levels and, thus, negatively impact elevator safety.

Commentors addressed the various detrimental effects of stress cracks and broken corn, and the majority of commentors recommended that FGIS offer stress crack testing as part of the national inspection service. Due to the importance of stress crack testing, GIPSA proposes to offer stress crack testing, upon request, as official criteria. GIPSA and the official agencies of the national inspection system will use the method recommended by the Illinois Crop Improvement Association's Identity Preserved Grain Lab (IPGL) which performs stress crack tests on over 4,000 corn samples per year. FGIS will use this method because it is cost-effective, easy to use, and quick.

As described by the IPGL, stress crack tests are performed on random subsamples of 100 kernels. The kernels are inspected visually on a back lighting lightboard and separated into four categories: no or zero stress cracks, and more than two or multiple stress cracks. The percentage of kernels falling into each category is used to calculate the percentage of stress cracks and a stress crack index as follows:

% TSC = [% single SC + % double SC + % multiple SC]

SCI = [(% single SC) + (% double SC × 3) + (% multiple SC × 5)]

where SC = stress cracks, SCI = stress crack index,

and TSC = total stress cracks

The stress crack index is an indication of the multiplicity of stress cracks in each kernel. The weighting factors indicate that corn kernels with double and multiple stress cracks are more susceptible to breakage than kernels with single stress cracks.

FGIS seeks comments not only on the proposal to offer stress crack testing as official criteria but on the reporting method for results. Since the information will be readily available, commentors should address whether the percentage of stress cracks in each of the three categories, single, double, and multiple, should, be reported. If no comments are received on the reporting method, FGIS will report only the total percent of stress cracks and the stress crack index.

Miscellaneous Changes

FGIS proposes to revise the format of the grade chart in § 810.404, Grades and grade requirements for corn, to improve the readability of the grade chart.

Proposed Action

FGIS proposes to revise § 810.102, Definition of other terms, by revising section (d), Test weight per bushel. It is proposed that TW in corn be reported to the nearest tenth of a pound.

FGIS proposes to revise § 810.404, Grades and grade requirements for corn, by revising the definition of U.S. Sample grade by eliminating the count limit on stones and reducing the aggregate weight criteria from more than 0.2 percent by weight to more than 0.1 percent by weight.

Comments including data, views, and arguments are solicited from interested

persons. Pursuant to Section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be orally presented in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Administrator, the public health, interest, or safety require that they become effective sooner.

References

(1) Reid, J.F., Kim, C., and Paulsen, M.R. 1991, ''Computer Vision Sensing of Stress Cracks in Corn Kernels'' ASAE, Sept/Oct, v.34 p. 8–9.
(2) Stroshine, R. 1991, ''Breakage Susceptibility Technology, Uniformity by 2000,'' Scherer communications, Urbana. p. 410–416.

List of Subjects in 7 CFR Part 810

Exports, Grain.

For reasons set out in the preamble, 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 810.102(d) is revised to read as follows:

§ 810.102 Definition of other terms.

* * * * *

(d) *Test-weight.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test-weight in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test-weight in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test-weight is recorded to the nearest tenth pound for corn, rye, triticale, and wheat. Test-weight for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test-weight is not an official factor for canola.

* * * * *

3. Section 810.404 is revised to read as follows:

§ 810.404 Grades and grade requirements for corn.

Grading factors	Grades U.S. Nos.				
	1	2	3	4	5
Maximum limits of:					
Test Weight (lbs/bu)	56.0	54.0	52.0	49.0	46.0
Maximum percent limits of:					
Damaged kernels Heat (part of total)	0.1	0.2	0.5	1.0	3.0
Total	3.0	5.0	7.0	10.0	15.0
Broken corn and foreign material	2.0	3.0	4.0	5.0	7.0
Animal filth	0.2	0.2	0.2	0.2	0.2
Stones	0.1	0.1	0.1	0.1	0.1
Maximum count limits of:					
Other materials:					
Castor beans	1	1	1	1	1
Cockleburs	7	7	7	7	7
Crotalaria seeds	2	2	2	2	2
Glass	1	1	1	1	1
Unknown foreign substance	3	3	3	3	3
U.S. Sample grade:					
U.S. Sample grade is corn that:					
(a) Does not meet the requirements for the grades U.S. Nos, 1, 2, 3, 4, or 5; or					
(b) Has a musty, sour, or commercially objectionable foreign odor; or					
(c) Is heating or otherwise of distinctly low quality.					

Harold W. Davis,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 95–4183 Filed 2–21–95; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–41]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80A series turbofan engines. This proposal would require an initial and repetitive on-wing eddy current inspection or an on-wing spot fluorescent penetrant inspection of the compressor rear frame (CRF) midflange for cracks, and replacement, if

necessary, with serviceable parts. This proposal would also require removal from service of certain CRF's as a terminating action to the on-wing inspection program. This proposal is prompted by a report of a CRF separation that resulted in a rejected takeoff. The actions specified by the proposed AD are intended to prevent a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

DATES: Comments must be received by April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–41.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–41, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80A series turbofan engines. The Federal Aviation Administration (FAA) has received a report of a compressor rear frame (CRF) separation on a GE CF6–80A series turbofan engine that resulted in a rejected takeoff. The FAA has also received seventeen additional reports of CRF's found cracked in service. Investigation reveals that axial cracks initiate in the CRF midflange and propagate in fatigue due to a high peak mean stress found at the rib radius tangency point where the rib rises to form the CRF midflange lug. The high peak mean stress is a result of thermal and pressure loading of the CRF midflange. The cracks reach critical size, and may result in a CRF separation. CRF's with modified midflanges exist which decrease the peak mean stress, therefore reducing the chance of a crack initiating. This condition, if not corrected, could result in a CRF separation, which could result in a rejected takeoff and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–80A Service Bulletin (SB) No. 72–593, Revision 2, dated March 19, 1992, that describes procedures for the initial and repetitive on-wing eddy current inspection (ECI) and the on-wing spot fluorescent penetrant inspection (FPI).

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an initial and repetitive on-wing ECI or on-wing spot FPI of the CRF midflange for cracks, and replacement, if necessary, with serviceable parts. This proposal would also require removal from service of non-modified CRF's as a terminating action to the on-wing inspection program. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 81 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 85 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $20,644 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,085,264.

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:

General Electric Company: Docket No. 94–ANE–41.

Applicability: General Electric Company (GE) CF6–80A series turbofan engines installed on, but not limited to, Airbus A310 series and Boeing 767 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a compressor rear frame (CRF) separation, which could result in a rejected takeoff and damage to the aircraft, accomplish the following:

(a) Inspect CRF, Part Numbers (P/N) 9283M77G07, 9283M77G08, 9283M77G09, 9283M77G11, 9283M77G14, 7283M77G15, 9283M77G16, 9283M77G17, 9283M77G18, 9283M77G19, 1338M77G01, 1338M77G02, 1338M77G03, 1338M77G04, 1338M77G05, and 1338M77G06, that have not accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A Service Bulletin (SB) No. 72–600 or 72–611, prior to the effective date of this AD, as follows:

(1) Perform an on-wing eddy current inspection (ECI) or an on-wing spot fluorescent penetrant inspection (FPI) of the CRF midflange for cracks in accordance with the Accomplishment Instructions and the schedule outlined in Table 1 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, or within 1,000 cycles in service since the last shop level FPI, whichever occurs later, after the effective date of this AD.

(2) Thereafter, reinspect the CRF midflange for cracks in accordance with the Accomplishment Instructions and schedule outlined in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992.

(3) Remove from service prior to further flight CRF's with cracked midflanges that exceed the on-wing serviceable limits specified in Table 2 of GE CF6–80A SB No. 72–593, Revision 2, dated March 19, 1992, and replace with a serviceable part.

(b) Remove from service CRF's identified in paragraph (a) of this AD at the next piece-part exposure, or by December 31, 1996, whichever occurs earlier, and replace with a serviceable part. Removal and replacement of CRF's in accordance with this paragraph constitutes terminating action to the on-wing inspection requirements of paragraph (a) of this AD.

(c) For the purpose of this AD, a serviceable part is defined as a CRF that has accomplished the midflange rework or replacement in accordance with any revision level of GE CF6–80A SB No. 72–600 or 72–611.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

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

Issued in Burlington, Massachusetts, on February 14, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4249 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–CE–23–AD]

Airworthiness Directives; Jetstream Aircraft Limited (formerly British Aerospace, Regional Aircraft Limited) Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document reopens the comment period and proposes to revise an earlier proposed airworthiness directive (AD), which would have required inspecting the main passenger/crew door locking mechanism on certain Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes to ensure that a taper pin is installed, and installing a taper pin if not already installed. Since publication of that proposal, the Federal Aviation Administration (FAA) has re-examined various service difficulty reports on the affected airplanes, and determined that this is still a valid safety issue, and that a modification to the passenger door warning system should also be included. Since this action adds an additional modification that was not originally proposed, the FAA is allowing additional time for the public to comment. The proposed actions are intended to prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which, if not detected and corrected, could result in passenger injury if emergency evacuation is needed.

DATES: Comments must be received on or before April 28, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 92–CE–23–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal (NPRM) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on May 26, 1992 (57 FR 21911). The action proposed to require inspecting the main passenger/crew door locking mechanism to ensure that a taper pin is installed, and installing a taper pin if not already installed. The proposed actions would require to be accomplished in accordance with Jetstream Service Bulletin (SB) 52–A–JA 911140, dated February 3, 1992. This proposal was revised to incorporate Jetstream 52–A–JA 911140, Revision 1, dated June 26, 1992, and then republished in the **Federal Register** as a supplemental NPRM on April 26, 1993 (58 FR 21957).

Interested persons were afforded an opportunity to participate in the making of this amendment during both the NPRM and supplemental NPRM stages. No comments were received on the proposed rule or the FAA's determination of the cost to the public in either instance.

Since publication of the proposals, the FAA has re-examined various service difficulty reports on the affected airplanes, and determined that the proposed modification is still a valid safety issue, but is not considered an urgent safety of flight issue. In addition, the FAA determined that a modification to the passenger door warning system should be incorporated in order to ensure evacuation efficiency in the event of an emergency. Several reports of passenger door warning system malfunctions prompted the FAA to incorporate this modification into the proposal. Accomplishment of the proposed passenger door warning modification would be in accordance with Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through	Original Issue	November 19, 1992.
1, 2, and 3 ...	Revision 1	August 10, 1993.

In addition, JAL has revised certain pages of Jetstream SB 52–A–JA 911140, and the FAA has incorporated these revised pages (Revision 2) into the proposal. Jetstream SB 52–A–JA 911140 now incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original Issue	February 3, 1992.
2	Revision 1	June 26, 1992.
1, 3, 6, and 8	Revision 2	October 6, 1992.

Since this action adds an additional modification that was not originally proposed, the FAA is reopening the comment period to provide additional time for public comment.

The FAA estimates that 200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours (2 workhours for the taper pin installation and 8 workhours for the passenger door warning system modification) per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts to accomplish the modifications will be provided by JAL at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $120,000. This figure is based on the assumption that no affected owner/operator has accomplished either of the proposed modifications; that all airplanes would need a taper pin installed on the passenger/crew door locking mechanism; and that no airplane owner/operator has accomplished the passenger door warning system modification. The FAA anticipates that a majority of the affected airplanes would already have taper pins installed and passenger door warning system modifications incorporated, thereby reducing the proposed cost impact upon the public.

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 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) 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 has been placed 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 a new airworthiness directive to read as follows:

Jetstream Aircraft Limited: Docket No. 92–CE–23–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 500 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to open the passenger/crew door or failure of the passenger door warning system, which, if not detected and corrected, could result in passenger injury if emergency evacuation is needed, accomplish the following:

(a) For all affected airplanes that have a main passenger/crew door installed with one of the following serial numbers, accomplish paragraphs (a)(1) and (a)(2) of this AD, as applicable:

WIPL–SD–0001 through WIPL–SD–0005, WIPL–SD–0008 through WIPL–SD–0031, WIPL–SD–0034 through WIPL–SD–0046,

WIPL–SD–0049, WIPL–SD–0051 through WIPL–SD–0065, WIPL–SD–0067, WIPL–SD–0070, WIPL–SD–0071,
SDJ10883, SDJ10884A, SDJ10884B, and SDJ10886 through SDJ10891

(1) To ensure that a part number SP28E4 taper pin is installed, visually inspect the passenger/crew door locking mechanism in the area between the locking dog and indicator button assembly in accordance with Part 2 of the Accomplishment Instructions section of Jetstream Service Bulletin (SB) 52–A–JA 911140, which incorporates the following pages:

Pages	Revision level	Date
4, 5, 7, and 9	Original Issue	February 3, 1992.
2	Revision 1	June 26, 1992.
1, 3, 6, and 8	Revision 2	October 6, 1992.

(2) If a taper pin (part number SP28E4) is not installed, prior to further flight, accomplish Part 3 of the Accomplishment Instructions section of Jetstream SB 52–A–JA 911140.

(b) For all affected airplanes regardless of the serial number passenger door installed, modify the passenger door warning system in accordance with the Accomplishment Instructions section of Jetstream SB 52–JM 7793, which incorporates the following pages:

Pages	Revision level	Date
4 through 11	Original Issue	November 19, 1992.
1, 2, and 3 ...	Revision 1	August 10, 1993.

Note 1: Compliance with a previous revision level of the service bulletins referenced in this AD fulfills the applicable requirements of this AD and is considered ''unless already accomplished'' for that portion of the AD.

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

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

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

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4252 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–254–AD]

Airworthiness Directives; Lockheed Model L–1011–385 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 Lockheed Model L–1011–385 series airplanes. This proposal would require modifications of various fluid drainage areas of the fuselage. This proposal is prompted by incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes due to problems associated with corrosion.

DATES: Comments must be received by April 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–254–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 Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Flight Test Branch, ACE–160A, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

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–254–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–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight.

Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Working Group (AAWG) was established initially in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AAWG was to sponsor ''Task Groups'' to:

1. select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;

2. develop corrosion-directed inspections and prevention programs;

3. review the adequacy of each operator's structural maintenance program;

4. review and update the Supplemental Inspection Documents (SID); and

5. assess repair quality.

The L–1011 Structures Task Group, which was assigned by the AAWG to review the Lockheed Model L–1011–385 series airplanes, completed its work on Item 2 in 1991 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Model L–1011 fleet. The program is contained Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated March 15, 1991.

The FAA reviewed and approved that Document and, on October 8, 1993, issued AD 93–20–03, amendment 39–8710 (58 FR 60775, November 18, 1993), which is applicable to all Lockheed Model L–1011 series airplanes. That AD requires the implementation of a corrosion prevention and control program (CPCP), comparable to the one outlined in the Lockheed Document, either by accomplishing specific tasks or by revising the FAA-approved maintenance inspection program to include such a program.

Current Service Information

Since issuance of AD 93–20–03, the FAA has reviewed and approved Revision A of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' dated April 1994. This revision of the Lockheed Document contains Section 7.2, which lists twelve Lockheed service bulletins that have been recommended for mandatory action by the L–1011 Structures Task Group.

The twelve Lockheed service bulletins recommended by the Task Group describe various modifications, installations, and inspections of the fuselage and wings that are intended to decrease the airplane's susceptibility to corrosion in specific areas. The pertinent Lockheed service bulletins are:

1. Service Bulletin 093–51–007, Revision 5, dated December 20, 1973, describes procedures for modifying the afterbody-emennage-wing area to improve drainage capability.

2. Service Bulletin 093–53–061, Revision 1, dated June 20, 1974, describes procedures for modifying the drainage provisions at the surround structure of the C–1, C–2, and C–3 cargo doors.

3. Service Bulletin 093–53–068, dated October 23, 1974, describes procedures for installing a drain at the C–1A cargo door sill.

4. Service Bulletin 093–53–095, Revision 2, dated June 22, 1987, describes procedures for installing additional provisions for drainage at the pressure deck of the nose landing gear.

5. Service Bulletin 093–53–113, dated November 12, 1975, describes procedures for a modifying the area of the stringers at Fuselage Station (FS) 1792 to improve fluid drainage.

6. Service Bulletin 093–53–157, dated May 3, 1977, describes procedures for inspecting and modifying the sealing and drainage provisions at the aft pressure bulkhead.

7. Service Bulletin 093–53–186, Revision 3, dated June 11, 1991, describes procedures for the installing additional drainage provisions in the fuselage drain system.

8. Service Bulletin 093–53–192, Revision 2, dated December 9, 1981, describes procedures for modifying the fuselage drain system.

9. Service Bulletin 093–53–204, Revision 1, dated March 26, 1984, describes procedures for modifying the door sill drain and cargo compartment beam at the galley and door compartments.

10. Service Bulletin 093–53–234, Revision 2, dated November 12, 1992, describes procedures for modifying the galley door sill area to improve corrosion resistance.

11. Service Bulletin 093–57–089, Revision 1, dated October 4, 1976, describes procedures for installing drain provisions and a dam in the main landing gear torque box.

12. Service Bulletin 093–57–138, Revision 1, dated July 17, 1981, and Change Note, dated September 3, 1982, describe procedures for inspecting the lower surface bolts at wing body line (WBL) 115.95 to detect corrosion, and necessary modification.

The FAA has considered the recommendation of the Task Group and concurs with it. The FAA has determined that accomplishment of the actions specified in the twelve Lockheed service bulletins will contribute to positively addressing the unsafe condition presented by the problems associated with corrosion.

Proposed Requirements of AD

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require the accomplishment of the modification, installation, and other actions specified in the twelve Lockheed service bulletins described previously.

Although the proposed AD would be a rulemaking action completely separate from AD 93–20–03, the compliance schedule for the accomplishment of the proposed actions would be consistent with that for the corrosion inspections (tasks) currently required by AD 93–20–03. The initial corrosion tasks required by AD 93–20–03 must be accomplished within various intervals of time, depending on what ''airplane zone'' is involved; the intervals are measured from a date one year after the effective date of that AD. Accordingly, since the effective date of AD 93–20–03 is ''December 17, 1993,'' the schedule for the actions currently required by that AD is measured from December 17, 1994.

This proposed AD would require accomplishment of the proposed modifications, installations, and

inspections at the same time that the initial corrosion task in the corresponding airplane zone is required by AD 93–20–03. Scheduling the proposed actions at the same time as the currently-required corrosion tasks will minimize additional work for affected operators by allowing them to perform all actions concurrently. This also will eliminate the necessity of operators having to gain access to subject areas more than once.

Additionally, certain of the modifications described in the twelve Lockheed service bulletins were incorporated previously on some airplanes during production. For such cases, no additional work would be required by this proposed AD.

Economic Impact Information

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 236 work hours per airplane to accomplish the proposed actions, including time to gain access and close up. The average labor rate is currently $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,656,720, or $14,160 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. However, as indicated previously, some airplanes that would be subject to the proposed AD were modified during production to incorporate certain of the proposed modifications and installations. In light of this, the total cost impact of this proposal would be considerably less that the figure discussed above.

Additionally, the number of required work hours for the proposed requirements of this AD, as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice, these actions would be accomplished coincidentally or in combination with actions currently required by AD 93–20–03. Therefore, the actual number of necessary ''additional'' work hours will be minimal for the majority of affected operators.

Regulatory Impact

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:

Lockheed: Docket 94–NM–254–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to the problems associated with corrosion accomplish the following:

(a) Accomplish the modifications, installations, and inspections described in the Lockheed service bulletins listed in Section 7.2 of Lockheed Document Number LR 31889, ''Corrosion Prevention and Control Program, TriStar L–1011,'' Revision A, dated April 1994 (hereafter referred to as ''the Document''), in accordance with the following schedule:

Note 2: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished prior to the effective date of this AD or during production are considered to be in compliance with this paragraph.

Note 3: Airplanes on which the modifications, installations, and inspections required by this paragraph have been accomplished previously in accordance with an earlier version of the applicable service bulletin listed in Section 7.2 of the Document, are considered to be in compliance with this paragraph.

Note 4: ''Airplane zones,'' ''implementation ages,'' and ''repeat intervals,'' as referred to in this paragraph, are specified in Section 4.3 of the Document.

(1) For modifications, installations, and inspections located in an airplane zone that has not yet exceeded the ''implementation age'' (IA) for that zone as of December 17, 1994 (one year after the effective date of AD 93–20–03, amendment 39–8710): Compliance is required no later than the IA plus the repeat (R) interval for the applicable zone.

(2) For modifications, installations, and inspections located in an airplane zone that has exceeded the IA for that zone as December 17, 1994: Compliance is required within one R interval for that zone, measured from December 17, 1994.

(3) For airplanes that are 20 years old or older as of December 17, 1994: Accomplishment of the modifications, installation, and inspections is required within one R interval for the applicable airplane zone, but not to exceed 6 years, measured from December 17, 1994, whichever occurs first.

(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, Atlanta Aircraft Certification Office (ACO), ACE–115A, 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, Atlanta ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

Issued in Renton, Washington, on February 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–4253 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–61–AD]

Airworthiness Directives; Piper Aircraft Corporation PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes. The proposed action would require repetitively inspecting the main gear side brace studs for cracks and replacing any cracked main gear side brace stud. Several reports of main gear side brace stud cracks on the affected airplanes, including seven incidents where the main landing gear (MLG) collapsed, prompted the proposed AD. The actions specified by the proposed AD are intended to prevent a MLG collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before May 5, 1995.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be inspected at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 93–CE–61–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of main gear side brace stud cracks on Piper PA24, PA32R, PA34–200, and PA34–200T series airplanes. These reports include an accident in the United Kingdom where the main landing gear (MLG) collapsed on a Piper PA34–200 series airplane because of high cycle fatigue cracking of the main gear side brace stud. Metallurgical examination of the stud revealed that separate fatigue cracks had originated from both the inboard and the outboard edges near the bending radius of the shank. Reverse bending loads then allowed these cracks to extend across approximately 30-percent of the shank cross-section. The remaining 70-percent of the shank cross-section failed because of overstress. Review of service difficulty records in the United Kingdom and Canada, as well as the United States, indicated that this accident was almost identical to other accidents on Piper airplane models of similar type design.

On February 11, 1994, the FAA issued an advance notice of proposed rulemaking (ANPRM) to solicit comments from owners/operators of the affected airplanes in order to adequately make a determination as to what type of action to take (if any). From responses to this ANPRM, the FAA found that most of the owners/operators that responded are currently inspecting the main gear side brace studs on a routine basis (every annual or 100 hours); however, these operators are not removing the studs or using non-destructive inspection methods. Based on its review of the above-referenced incidents, the FAA has determined that, in order to adequately detect any cracks on the main gear side brace studs, these studs must be removed and inspected using dye penetrant or magnetic particle methods.

After examining the circumstances and reviewing all available information related to the incidents and accidents described above, including the comments received in response to the ANPRM, the FAA has determined that AD action should be taken to prevent MLG collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes of the same type design, the proposed AD would require repetitively inspecting (using dye penetrant or magnetic particle methods) the main gear side brace studs for cracks, and replacing any cracked main gear side brace stud.

The FAA estimates that 9,200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours to initially inspect both the right and left main landing gear side brace studs, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,760,000. This figure represents the cost of the initial inspection, and does not reflect costs for

repetitive inspections or possible replacements. The FAA has no way of determining how many main gear side brace studs may need replacement or how many repetitive inspections each owner/operator may incur.

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 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) 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 has been placed 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.

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 a new AD to read as follows:

Piper Aircraft Corporation: Docket No. 93–CE–61–AD. Applicability: PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes (all models and serial numbers), certificated in any category. Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To prevent main landing gear (MLG) collapse caused by main gear side brace stud cracks, which, if not detected and corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Remove both the left and right main gear side brace studs from the airplane in accordance with the instructions contained in the Landing Gear section of the maintenance manual, and inspect each main gear side brace stud for cracks, using FAA-approved dye penetrant or magnetic particle methods.

(1) For any main gear side brace stud found cracked, prior to further flight, replace the cracked stud with an FAA-approved serviceable part (part numbers referenced in the table in paragraph (b) of this AD) in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect as specified in paragraph (b) of this AD.

(2) For any main gear side brace stud not found cracked, prior to further flight, reinstall the uncracked stud in accordance with the instructions contained in the Landing Gear section of the applicable maintenance manual, and reinspect as specified in paragraph (b) of this AD.

(b) Reinspect both the left and right main gear side brace studs, using FAA-approved dye penetrant or magnetic particle procedures, at the applicable intervals presented below, and replace any cracked stud or reinstall any uncracked stud as specified in paragraphs (a)(1) and (a)(2) of this AD, respectively:

Part number installed	TIS inspection interval	Series Airplanes Installed on
20829–00	1,000 hours ..	PA24.
22512–00	1,000 hours ..	PA24, PA30, and PA39
95299–00 or 95299–02.	500 hours	PA28R, PA32R, PA32RT, PA34–200, PA34–200T, and PA44.
78717–02 (contained in the part number 95643–06 or 95643–07 bracket assembly).	1,000 hours ..	PA28R, PA32R, PA32T, PA34–200, PA34–200T, and PA44.

Note 1: Main gear side brace studs, part numbers, 95299–00 and 95299–02, are no longer manufactured, and any main gear side brace stud found cracked incorporating one of these part numbers may be replaced with a part number 78717–02 main gear side brace stud contained in the part number 95643–06 and 95643–07 bracket assembly.

Note 2: Accomplishing the actions of this AD does not affect the requirements of AD 77–13–21, Amendment 39–3093. The tolerance inspection requirements of that AD still apply for Piper PA24, PA30, and PA39 series airplanes.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Information related to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on February 14, 1995.

Barry D. Clements,

Manager, Small Airpane Directorate, Aircraft Certification Service.

[FR Doc. 95–4251 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–ANE–30]

Airworthiness Directives; Superior Air Parts, Inc. Pistons Installed on Teledyne Continental Motors O–470 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Superior Air Parts, Inc. pistons installed on Teledyne Continental Motors O–470 series reciprocating engines. This proposal would require removal from service of certain pistons. This proposal is prompted by reports of piston failures. The actions specified by the proposed AD are intended to

prevent piston failure, which can result in engine power loss, engine failure and loss of the aircraft.

DATES: Comments must be received by April 24, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–30, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Superior Air Parts, Inc., 14280 Gillis Rd., Dallas, TX 75244–3792; telephone (800) 487–4884. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Richard Karanian, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; telephone (817) 222–5195, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–30.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–30, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of failures of Superior Air Parts, Inc. pistons, Part Number (P/N) SA626992, installed on Teledyne Continental Motors O–470 series engines. Investigation revealed that an undetermined number of these pistons had sharp edged casting lines in the area of the piston pin boss that could cause a stress riser. In 1981, Superior Air Parts, Inc. introduced an improved design piston, P/N SA640518, recommended to replace piston, P/N SA626992, at major overhaul. However, the older model pistons, which are subjected to high stresses due to heat, firing pressures, and uneven forces applied to the piston skirt as the clearance between the piston and cylinder barrel increases during service, are being reused over more than one overhaul cycle. This condition, if not corrected, could result in engine power loss, engine failure and loss of the aircraft.

The FAA has reviewed and approved the technical contents of Superior Air Parts, Inc. Service Bulletin (SB) No. 93–007, dated November 18, 1993, that describes identification procedures for determining the piston P/N, and recommends replacement of all affected pistons at major overhaul.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal from service of Superior Air Parts, Inc. pistons, P/N SA626992, at the next access to the piston, top overhaul, or major overhaul. The affected pistons can be identified by either a stamped-in P/N on the piston dome (SA626992 or SA626992P15) or, by a raised number (SA632932) along one of the piston pin bosses on the underside of the piston. The actions would be required to be accomplished in accordance with the SB described previously.

The manufacturer has informed the FAA that 5,585 pistons were shipped between December 1976 and June 1981 and would be affected by this proposed AD. The FAA estimates that it would take approximately 2 work hours per piston to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $156 per piston. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,541,460.

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:

Superior Air Parts, Inc.: Docket No. 94–ANE–30.

Applicability: Superior Air Parts, Inc. pistons, Part Numbers (P/N) SA626992, SA626992P15, and SA632932, installed on

Teledyne Continental Motors Model O–470–K, –L, –R reciprocating engines. These engines are installed on but not limited to Cessna 182 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent piston failure, which can result in engine power loss, engine failure and loss of the aircraft, accomplish the following:

(a) At the next access to the piston, top overhaul, or major overhaul after the effective date of this airworthiness directive, whichever occurs first, remove from service pistons, P/N SA626992, and replace with a serviceable part.

Note: The affected pistons can be identified by either a stamped-in P/N on the piston dome (SA626992 or SA626992P15) or, by a raised number (SA632932) along one of the piston pin bosses on the underside of the piston.

(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, Fort Worth Special 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, Fort Worth Special Certification Office.

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

Issued in Burlington, Massachusetts, on February 14, 1995.

James C. Jones,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–4250 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 353, 355, and 356

[Docket No. 941264–4364]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Advance Notice of Proposed Rulemaking; Extension of Comment Period.

SUMMARY: The Department of Commerce issued an advance notice of proposed rulemaking and request for comments as the first step in the process of conforming the existing antidumping, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act. In an effort to accommodate parties interested in submitting comments in this rulemaking proceeding, the Department is extending the comment period announced in the advanced notice of proposed rulemaking.

DATES: Final comments should be received on or before April 3, 1995.

ADDRESSES: Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, DC 20230. Comments should be addressed: Attention: Advance Notice of Proposed Rulemaking/Uruguay Round Agreements Act. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, (202) 482–4412, or David Mason Jr., (202) 482–4969.

SUPPLEMENTARY INFORMATION: On January 3, 1995, the Department of Commerce (the Department) published an Advance Notice of Proposed Rulemaking and Request for Comments in the **Federal Register** *(Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement* (''Advance Notice of Proposed Rulemaking'') (60 FR 80) as the first step in the process of conforming the Department's existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the Uruguay Round Agreements Act. In its notification, the Department requested initial comments by February 3, 1995 and final comments by February 24, 1995. In an effort to accommodate parties interested in submitting comments in this rulemaking proceeding, the Department now extends the time in which to file final comments pursuant to the Advance Notice of Proposed Rulemaking. The new due date for final comments is April 3, 1995.

FORMAT AND NUMBER OF COPIES: Parties should submit comments in the following format: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth in the Department's Advance Notice of Proposed Rulemaking (60 FR 80; January 3, 1995)); (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section ''summary of the comment.''

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and one paper copy. All documents filed in electronic form must be on DOS formatted 3.5'' diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues outlined below.

Comments received on diskette will continue to be made available to the public on Internet under the following address: FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT

In addition, the Department will continue to make comments available to the public on 3.5'' diskettes, with specific instructions on accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

List of Subjects in 19 CFR Parts 353, 355, and 356

Business and industry, Foreign trade, Imports, Trade Practices.

Dated: February 16, 1995.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 95–4453 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 63

[WA22–1–6362; FRL–5157–4]

Approval and Promulgation of Implementation Plans, Washington; Approval of Section 112(l) Authority; Preconstruction and Operating Permits; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve in part and disapprove in part, numerous revisions to the State of Washington

Implementation Plan submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on March 8, 1994. The revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act). EPA is also proposing to take no action on a number of provisions which are unrelated to the purposes of the implementation plan. EPA also invites public comment on its proposal to approve certain WDOE rules, and certain rules of the Puget Sound Air Pollution Control Agency (PSAPCA) and Southwest Air Pollution Control Authority (SWAPCA), submitted to EPA by the Director of WDOE on September 29, 1994, under the authority of section 112(l) of the Act in order to recognize conditions and limitations established pursuant to these rules as Federally enforceable.

DATES: Comments must be postmarked on or before March 24, 1995.

ADDRESSES: Written comments should be addressed to: David Bray, Permits Programs Manager, EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Air & Radiation Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Permit Programs Manager, EPA, Air & Radiation Branch (AT–082), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress amended the Clean Air Act to require, among other things, revisions to state implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas). Under the provisions of the Act, revisions to title I, part D (nonattainment area) new source review (NSR) rules were required to be submitted by June 30, 1992 for PM–10 nonattainment areas, by November 15, 1992 for most ozone and carbon monoxide nonattainment areas, and by November 15, 1993 for the remainder of the ozone and carbon monoxide nonattainment areas. The Washington Department of Ecology (WDOE) amended its part D NSR rules on August 20, 1993 and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP.

The Clean Air Act Amendments of 1990 also established a new title V which requires States to develop operating permit programs for most stationary sources. While title V operating permit programs are not intended to be part of the SIP, many provisions of the SIP will interact closely with the title V operating permit program. As such, most States will be revising provisions of their SIPs to facilitate and improve the relationship between their SIP and their title V operating permit program. The WDOE amended several provisions of its current rules for air pollution sources and submitted them to EPA on March 8, 1994 as a revision to the Washington SIP.

Section 112(l) of the Act also enables the EPA to approve State air toxics rules or programs for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants. Approval is granted by the EPA if the Agency finds that: (1) The State rule or program is ''no less stringent'' than the corresponding Federal program or rule; (2) the State program is supported by adequate authority and resources; (3) the schedule for implementation and compliance of emission standards and other requirements is sufficiently expeditious; and (4) the rules are otherwise in compliance with Federal guidance.

On September 29, 1994, the Director of the WDOE submitted an official application to obtain approval for title V permitting authorities (with the exception of PSAPCA and SWAPCA) in the State of Washington to implement and enforce the statewide rules for ''Controls for New Sources of Toxic Air Pollutants'' (WAC 173–460) as an interim program to implement section 112(g) of the Act. The Director of the WDOE also submitted an official application on behalf of the PSAPCA and SWAPCA to obtain approval for those local agencies to implement and enforce their own rules (portions of PSAPCA Regulations I and III and SWAPCA Regulation 460) for new sources of toxic air pollutants.

II. Discussion of SIP Submittal

A. Description of SIP Submittal

On March 8, 1994, the Director of the WDOE submitted all of Chapter 173–400 WAC ''General Regulations for Air Pollution Sources'' (with the exception of WAC 173–400–114) as amended on August 20, 1993, as a revision to the Washington SIP. The amended rules include changes to the following sections: WAC 173–400–030 ''Definitions;'' WAC 173–400–040 ''General standards for maximum emissions;'' WAC 173–400–100 ''Registration;'' WAC 173–400–105 ''Records, monitoring, and reporting;'' WAC 173–400–110 ''New source review (NSR);'' WAC 173–400–120 ''Bubble rules;'' WAC 173–400–131 Issuance of emission reduction credits;'' WAC 173–400–136 ''Use of emission reduction credits;'' WAC 173–400–141 ''Prevention of significant deterioration (PSD);'' WAC 173–400–171 ''Public involvement;'' WAC 173–400–180 ''Variance;'' WAC 173–400–230 ''Regulatory actions;'' and WAC 173–400–250 ''Appeals.'' The amended rules include the following new sections which are revised and recodified provisions from the previous rules: WAC 173–400–112 ''Requirements for new sources in nonattainment areas;'' and WAC 173–400–113 ''Requirements for new sources in attainment or unclassifiable areas.'' Finally, the amended rules also include the following entirely new sections: WAC 173–400–081 ''Startup and shutdown;'' WAC 173–400–091 ''Voluntary limits on emissions;'' and WAC 173–400–107 ''Excess emissions.''

With the exceptions discussed in Section II.C. and II.D. below, EPA is proposing to approve the submitted version of Chapter 173–400 WAC as a revision to the Washington SIP. Note that those provisions of WAC 173–400 which were not revised on August 20, 1993 and are not discussed in Sections II.B., II.C., and II.D., below were previously approved by EPA on January 15, 1993 (58 FR 4578).

B. Discussion of Proposed Approvals

1. New Source Review

The existing provisions related to new source review (NSR) were extensively revised to meet the new requirements of Title I, Part D of the Act as set forth in the ''State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) and to make the WDOE rules more consistent with EPA's regulations for new source review programs in 40 CFR part 51, subpart I Review of New Sources and Modifications. Specifically:

a. The definitions of the following terms were revised to be consistent with EPA's definitions: ''actual emissions'' (WAC 173–400–030(1)), ''allowable emissions'' (WAC 173–400–030(5)), ''best available control technology

(BACT)'' (WAC 173–400–030(9)), ''Class I area'' (WAC 173–400–030(13)), ''emission standard and emission limitation'' (WAC 173–400–030(22)), ''major modification'' (WAC 173–400–030(39)), ''net emission increase'' (WAC 173–400–030(46)), ''new source'' (WAC 173–400–030(47)), ''significant'' (WAC 173–400–030(67)), ''source'' (WAC 173–400–030(69)), and ''volatile organic compound (VOC)'' (WAC 173–400–030(81)). EPA finds that these revised definitions are consistent with the requirements of 40 CFR Part 51, Subpart I, and therefore proposes to approve them as revisions to the Washington SIP.

b. New definitions of the following terms were added to be consistent with EPA's regulations: ''federal land manager'' (WAC 173–400–030(28)), ''mandatory Class I federal area'' (WAC 173–400–030(38)), ''major stationary source'' (WAC 173–400–030(40)), ''modification'' (WAC 173–400–030(43)), ''order'' (WAC 173–400–030(53)), ''order of approval'' (WAC 173–400–030(54)), and ''stationary source'' (WAC 173–400–030(74)). EPA finds that these new definitions are consistent with the requirements of 40 CFR part 51, subpart I, and therefore proposes to approve them as revisions to the Washington SIP.

c. WAC 173–400–110 ''New Source Review (NSR)'' was revised to clarify the applicability of the NSR rule and the procedures for submittal of applications, making completeness determinations and final determinations, and appeals of orders of approval. The section was also revised by revoking provisions and replacing them with two new sections as described below. EPA finds that this revised section is consistent with the requirements of 40 CFR part 51, subpart I, and therefore proposes to approve it as a revision to the Washington SIP.

d. A new section WAC 173–400–112 ''Requirements for new sources in nonattainment areas'' was added which specifies the requirements for new and modified major and minor stationary sources proposing to locate in designated nonattainment areas. New and modified minor stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not violate the requirements for reasonable further progress established in the SIP and comply with the State's air toxics requirements which EPA is today proposing to approve pursuant to section 112(l) of the Act (see below). New and modified major sources must also comply with all applicable requirements, meet the lowest achievable emission rate (LAER) for the nonattainment air pollutant and BACT for all other air pollutants, comply with the requirements for reasonable further progress by providing adequate offsetting emission reductions from existing sources in the nonattainment area, demonstrate that all other major sources owned or operated in the State of Washington are in compliance (or on a compliance schedule) with applicable requirements, demonstrate through an analysis of alternatives that the benefits of the project significantly outweigh the costs imposed as a result of its location in the nonattainment area, comply with the requirements for prevention of significant deterioration (PSD) if applicable, comply with the State's air toxics requirements, and comply with the visibility protection requirements for mandatory Federal Class I areas.

Section 189(e) of the Act requires part D NSR programs for PM_{10} nonattainment areas to treat PM_{10} precursor emissions in the same manner as PM_{10} emissions unless the Administrator has determined that PM_{10} precursors do not significantly contribute to violations of the PM_{10} NAAQS. However, WAC 173–400–112 does not address PM_{10} precursors nor require them to be treated in the same manner as PM_{10} emissions. The Administrator has previously made a determination that PM_{10} precursors do not significantly contribute to PM_{10} violations in the Thurston County, and Seattle, Tacoma, and Kent PM_{10} nonattainment areas (see 58 FR 40056 (July 27, 1993) and 59 FR 44324 (August 29, 1994)). The submitted control strategies for the Wallula, Spokane, and Yakima PM_{10} nonattainment areas contain sufficient information on the relative contribution of PM_{10} precursors to the nonattainment problem to enable the Administrator to determine at this time that PM_{10} precursors do not significantly contribute to violations of the PM_{10} NAAQS in those three areas. Based on the Administrator's determinations regarding PM_{10} precursors in the three remaining PM_{10} nonattainment areas, EPA finds this new section to be consistent with the requirements of 40 CFR part 51, subpart I, and title I, part D of the Act, as set forth in ''State Implementation Plans: General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990'' (57 FR 13498 (April 16, 1992)) and therefore proposes to approve it as a revision to the Washington SIP.

e. A new section WAC 173–400–113 ''Requirements for new sources in attainment or nonclassifiable areas'' was added which specifies the requirements for new and modified major and minor stationary sources located in attainment areas. New and modified minor stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not delay the attainment date for any nonattainment area nor cause or contribute to a violation of any ambient air quality standard, and comply with the State's air toxics requirements. New and modified major stationary sources must comply with all applicable requirements, utilize the best available control technology (BACT) for all air pollutants, not delay the attainment date for any nonattainment area nor cause or contribute to a violation of any ambient air quality standard, comply with the requirements for PSD if applicable, comply with the State's air toxics requirements, and not cause an adverse impact on visibility. EPA finds that this new section is consistent with the requirements of 40 CFR part 51, subpart I, and therefore proposes to approve it as a revision to the Washington SIP.

2. Startup and Shutdown

The new section on ''startup and shutdown'' (WAC 173–400–081) establishes a requirement that State and local air pollution control authorities consider any physical constraints on the ability of a source to comply with a standard whenever an authority promulgates a technology-based emission standard or makes a control technology determination. Where the authority determines that the source is not capable of achieving continuous compliance with a standard during startup or shutdown, the authority shall establish appropriate limitations to regulate the performance of the source during startup or shutdown conditions. The allowable emissions during startup or shutdown must be accounted for in any demonstration of attainment or maintenance of ambient air quality requirements. In addition, if such limitations would allow emissions during periods of startup or shutdown which exceed those allowed for under the current EPA-approved SIP, such limitations shall not take effect until approved by EPA as a revision to the SIP. EPA finds this section to be consistent with EPA requirements and proposes to approve it as a revision to the Washington SIP.

3. Excess Emissions

The new section on ''excess emissions'' (WAC 173–400–107) establishes requirements for reporting periods of excess emissions and the procedures and criteria for determining,

in the context of an enforcement action, when such excess emissions are unavoidable and could therefore be excused and not subject to penalty. The section sets forth separate criteria for periods of excess emissions resulting from startup or shutdown, scheduled maintenance, and upsets. EPA finds this section to be consistent with its requirements for SIP excess emissions rules (February 15, 1983 memorandum entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators, Regions 1–X) and therefore proposes to approve it as a revision to the Washington SIP. Note that this new section replaces the provisions for excess emissions which were formerly contained in WAC 173–400–105(5) and EPA also proposes to approve the repeal of those provisions.

4. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173–400–091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. Such limitations would be contained in a ''regulatory order'' issued by the WDOE or a local air authority, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with the limitations.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of Federally enforceable State operating permits. Permits issued pursuant to an operating permit program approved into the SIP as meeting these criteria may be considered Federally enforceable. The EPA has encouraged States to develop such programs in conjunction with title V operating permits programs to enable sources to limit their potential to emit to below the title V applicability thresholds. (See the guidance document entitled, ''Limitation of Potential to Emit With Respect to Title V Applicability Thresholds,'' dated September 18, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS), Office of Air and Radiation, U.S. EPA.) On November 3, 1993, the EPA announced in a guidance document entitled, ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, that this mechanism could be extended to create Federally enforceable limits for emissions of hazardous air pollutants (HAP) if the program were approved pursuant to section 112(l) of the Act.

The June 28, 1989 **Federal Register** notice establishes five criteria which must be met in order for EPA to approve a State operating permit program into the SIP: (1) The program must be submitted to and approved by the EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria or the EPA's underlying regulations shall be deemed not Federally enforceable; (3) any permit issued under the program must contain terms and conditions that are at least a stringent as any requirements contained in the SIP, enforceable under the SIP, or any section 112 or other CAA requirement, and may not allow for the waiver of any CAA requirement; (4) any permit issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) any permit that is intended to be Federally enforceable must be issued subject to public participation and must be provided to the EPA in proposed form on a timely basis.

EPA finds that WAC 173–400–091 meets the requirements for Federally enforceable State operating permit programs as set forth in the June 28, 1989 **Federal Register** (54 FR 27274) and proposes to approve it as a revision to the Washington SIP. Furthermore, EPA proposes that, after final approval to this section, ''regulatory orders'' issued pursuant to the EPA-approved WAC 173–400–091, and terms and conditions contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that section. Sources could, thereafter, rely on ''regulatory orders'' issued pursuant to this section as a means to limit their potential to emit criteria pollutants and the pollutants regulated under the PSD provisions of the SIP in order to avoid requirements which would otherwise apply to ''major stationary sources.'' EPA requests comment on the appropriateness of making Federally enforceable, as of the date of EPA approval, the terms and conditions of an order that was issued prior to EPA's approval of a State or local rule, provided the order itself complied with all of the requirements of the EPA-approved rule.

5. Miscellaneous Changes

The remaining changes to WAC 173–400–030 ''Definitions;'' and the changes to WAC 173–400–040 ''General standards for maximum emissions;'' WAC 173–400–100 ''Registration;'' WAC 173–400–105 ''Records, monitoring, and reporting;'' WAC 173–400–171 ''Public involvement;'' '' WAC 173–400–230 ''Regulatory actions;'' and WAC 173–400–250 ''Appeals'' are primarily administrative in nature to conform those sections to current State statutes and to other provisions of WAC 173–400. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as revised.

C. Discussion of Proposed Disapprovals

On January 15, 1993 (58 FR 4578), EPA disapproved numerous provisions of Chapter 173–400 WAC. These provisions were resubmitted as part of the March 8, 1994 submittal without the necessary changes to make them approvable. EPA is therefore proposing to again disapprove the following provisions. A complete discussion of the deficiencies and the reasons for disapproval can be found in the September 28, 1992 Notice of Proposed Rulemaking (57 FR 44530).

EPA is proposing to disapprove WAC 173–400–040(1) (c) and (d) which allow for the establishment of alternative opacity limits. EPA is proposing to disapprove the second paragraph of WAC 173–400–040(6) which provides an exception to the sulfur dioxide emission limitation. EPA is proposing to disapprove the exception provision in WAC 173–400–050(3) which allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources. EPA is proposing to disapprove WAC 173–400–180 Variance which allows the WDOE to grant a variance to the requirements governing the quality, nature, duration, or extent of discharges of air contaminants. EPA is proposing to disapprove WAC 173–400–120 Bubble Rules, WAC 173–400–131 Issuance of Emission Reduction Credits, and WAC 173–400–136 Use of Emission Reduction Credits as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986).

EPA is proposing to disapprove WAC 173–400–141 Prevention of Significant Deterioration (PSD) as it does not meet

the requirements of 40 CFR 51.166. WDOE has adopted, by reference, EPA's PSD regulations (40 CFR 52.21) as in effect on March 3, 1993. However, significant changes to EPA's regulations became effective on July 20, 1993, August 19, 1993 and June 3, 1994. Note that the PSD provisions of the Washington SIP are currently disapproved and EPA's PSD regulations have been promulgated into the Washington SIP (see 40 CFR 52.2497). Until WAC 173–400–141 is revised to meet current EPA requirements and is approved by EPA, WDOE will continue to issue PSD permits under a partial delegation of the EPA PSD permit program.

D. Provisions Unrelated to the SIP

EPA is proposing to take no action on WAC 173–400–040(2) Fallout; WAC 173–400–040(4) Odors; WAC 173–400–070(7) Sulfuric Acid Plants; WAC 173–400–075 Emission Standards for Sources Emitting Hazardous Air Pollutants; and WAC 173–400–115 Standards of Performance for New Sources, as these provisions are not related to the criteria pollutants regulated under the SIP.

III. Discussion of Section 112(l) Submittal

A. Description of Submittal

On September 29, 1994, the Director of the WDOE submitted WAC 173–460 ''Controls for New Sources of Toxic Air Pollutants,'' SWAPCA Regulation 460 ''Controls for New Sources of Toxic Air Pollutants,'' and PSAPCA Regulation I, Article 6 ''New Source Review'' and Regulation III, Article 2 ''Review of Toxic Air Contaminant Sources'' for approval under section 112(l) of the Act. These provisions establish requirements for preconstruction permits for new and modified sources of HAP.

B. Discussion of Proposed Approval

1. Permits to Construct for New and Modified Sources of Hazardous Air Pollutants

a. WAC 173–460 ''Controls for New Sources of Toxic Air Pollutants'' establishes the State of Washington's procedures for regulating new and modified stationary sources of toxic air pollutants. It is a comprehensive regulation which covers more pollutants than the 189 HAP listed in section 112(b) of the Act. In addition, it applies to most stationary sources of toxic air pollutants and not just major stationary sources. Finally, it requires both the application of the best available control technology for toxics (T–BACT) and a demonstration of the protection of human health and safety.

WAC 173–460–010 ''Purpose'' sets forth the purpose of this regulation and the policy of the State of Washington in regulating toxic air pollutants. WAC 173–460–020 ''Definitions'' incorporates all of the definitions from WAC 173–400 ''General Regulations for Air Pollution Sources'' and adds several new definitions specific to the control of toxic air pollutants. WAC 173–460–030 ''Requirements, applicability, and exemptions'' identifies the source categories subject to WAC 173–460 and certain general and specific exemptions from the regulation.

WAC 173–460–040 ''New source review'' supplements the new source review requirements of WAC 173–400–110 by adding additional requirements for toxic air pollutant sources. Specifically, it requires any new or modified source subject to WAC 173–460 to submit a notice of construction application and obtain a regulatory order approving the notice of construction prior to commencing construction. This section requires any new or modified stationary source to comply with all applicable requirements, utilize T–BACT, and demonstrate that toxic air pollutant emissions from the source are sufficiently low as to protect human health and safety from potential carcinogenic and/or other toxic effects. Source categories for which WDOE has established T–BACT by rule are exempted from the requirement to demonstrate that their emissions protect human health and safety. This section also specifies the process for making preliminary determinations, including public notice and opportunity for public comment, making final determinations, and appealing the permitting authority's decision.

WAC 173–460–050 ''Requirement to quantify emissions'' requires new sources to quantify emissions sufficient to perform the analyses required by WAC 173–460 and sets forth the procedures for making appropriate emissions calculations. WAC 173–460–060 ''Control technology requirements'' establishes the requirement for new and modified sources of toxic air pollutants to utilize T–BACT and establishes T–BACT requirements by rule for perchloroethylene dry cleaners, petroleum solvent dry cleaning systems, chromic acid plating and anodizing, solvent metal cleaners, and abrasive blasting.

WAC 173–460–070 ''Ambient impact requirement'' requires the owner or operator of a new or modified source of toxic air pollutants to demonstrate that emissions from the source are sufficiently low as to protect human health and safety from potential carcinogenic and/or other toxic effects. Compliance with this requirement must be demonstrated using the procedures set forth in WAC 173–460. WAC 173–460–080 ''Demonstrating ambient impact compliance'' requires the owner or operator of a new or modified air toxics source to complete an analysis which demonstrates compliance with the acceptable source impact levels (ASIL) established in WAC 173–460. The analysis must utilize dispersion modeling techniques in accordance with EPA guidelines, unless the source qualifies for using specified small quantity emission rate tables.

WAC 173–460–090 ''Second tier analysis'' provides an alternative approach for demonstrating acceptable impacts if the owner or operator of a proposed new source or modification could not demonstrate compliance with the acceptable source impact levels using the procedures specified in WAC 173–460–080. This section allows the owner or operator of a new or modified source to petition WDOE to perform a second tier analysis evaluation to determine a means of compliance with WAC 173–460–070 and –080 by establishing allowable emissions for the source. A second tier analysis may be requested when a source wishes to more accurately characterize risks, to justify risk greater than acceptable source impact levels, or to otherwise modify assumptions to more accurately represent risks. The WDOE may approve emissions of air toxics from a source where ambient concentrations would exceed acceptable source impact levels only if it determines that T–BACT is utilized and that emissions of certain air toxics are not likely to result in an increased cancer risk of more than one in one-hundred thousand. If the WDOE approves the second tier analysis, the notice of construction approval, following public notice and opportunity for comment, shall specify allowable emissions consistent with WDOE's determination and include all requirements necessary to assure that conditions of WAC 173–460 and WAC 173–400 are met.

WAC 173–460–100 ''Request for risk management decision'' provides an alternative approach for sources that emit certain toxic air pollutants that are likely to result in an increased cancer risk of more than one in one-hundred thousand. The owner or operator of such a source may request that WDOE make a risk management decision which would allow such greater risk. To receive such approval, the owner or

operator of such source must propose allowable emission limits for the source that represent all known available reasonable control technology, apply all known available air toxic pollution prevention methods, and demonstrate that the proposal will result in a greater benefit to the environment as a whole. The source may also propose measures that would reduce community exposure to comparable toxic air pollutants. WDOE's decision on any request for a risk management decision will follow a public notice and opportunity for public comment, including a public hearing, and appropriate conditions on emission controls, pollution prevention, or other measures, shall be included in the approval of the notice of construction.

WAC 173–460–110 ''Acceptable source impact levels'' establishes the process that the WDOE uses to establish the acceptable source impact levels in this regulation. WAC 173–460–120 ''Scientific review and amendment of acceptable source impact levels and lists'' establishes an ongoing process for the scientific review of information on toxic air pollutants and acceptable source impact levels. WAC 173–460–130 ''Fees'' authorizes the WDOE or local air authority to charge fees for the review of notices of construction. WAC 173–460–140 ''Remedies'' establishes the civil and criminal enforcement authorities for violations of WAC 173–460. Finally, WAC 173–460–150 ''Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels'' and WAC 173–460–160 ''Class B toxic air pollutants and acceptable source impact levels'' list the acceptable source impact levels for the toxic air pollutants regulated by WAC 173–460. Note that these levels are criteria used in a permit review process and are not standards which would be enforceable against sources by either the State or EPA.

EPA is proposing to approve WAC 173–460 under section 112(l) of the Act in order to recognize regulatory orders approving notices of construction as Federally enforceable. EPA is also proposing to approve the provisions of WAC 173–400 that are used to implement the requirements of WAC 173–460 (specifically, WAC 173–400–110, –112, –113, and –171) under section 112(l) of the Act. If approved, permitting authorities would be able to utilize regulatory orders issued pursuant to WAC 173–460 to establish Federally enforceable limits on potential to emit for new and modified stationary sources of HAP and to make any case-by-case MACT determinations required under section 112(g) of the Act.

The EPA believes it has authority under section 112(l) to approve State preconstruction review programs for HAP directly under section 112(l). The EPA is therefore proposing approval of WAC 173–460 now so that permitting authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

EPA is aware that WAC 173–460 was not designed specifically to implement section 112(g) of the Act. Furthermore, EPA has acknowledged that States may encounter difficulties implementing section 112(g) prior to promulgation of final EPA regulations (*see* June 28, 1994 memorandum entitled, ''Guidance for Initial Implementation of Section 112(g),'' signed by John Seitz, Director of the Office of Air Quality Planning and Standards). However, EPA believes that WAC 173–460 can serve as a procedural vehicle to make Federally enforceable any case-by-case MACT determinations required by section 112(g) during the transition period between title V approval in Washington and EPA approval of WDOE regulations to implement EPA's final section 112(g) regulations. EPA believes WAC 173–460 will be adequate for this transition period because it applies to any new source of HAP and any modification to an existing source of HAP. As such, any major source which would be subject to section 112(g) of the Act would be required by WAC 173–460 to obtain a regulatory order containing a T–BACT determination. Furthermore, WAC 173–460 allows permitting authorities to select control measures that would meet MACT, as defined in section 112 of the Act, and after EPA approval, to incorporate these measures into a Federally enforceable regulatory order.

b. SWAPCA Regulation 460 ''Controls for New Sources of Toxic Air Pollutants'' adopts WAC 173–460 by reference as a local regulation. As discussed in Section III.B.1. above, this WAC 173–460 meets all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. EPA is therefore proposing to approve SWAPCA Regulation 460 under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173–460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If SWAPCA Regulation 460 is revised or revoked, SWAPCA is approved to implement WAC 173–460 as the new source review program for HAP in SWAPCA's jurisdiction until such time as EPA approves the revision or revocation of SWAPCA Regulation 460.

c. PSAPCA Regulation I, Article 6 ''New Source Review'' and Regulation III, Article 2 ''Review of Toxic Air Contaminant Sources'' contain requirements for the construction and modification of stationary sources of HAP. Regulation I, Article 6 establishes a comprehensive new source review program that sets forth the process for submitting a ''Notice of Construction and Application for Approval'' and granting an ''Order of Approval'' or ''Order to Prevent Construction.'' It applies to new and modified sources of any air contaminant and includes requirements for the content of applications, payment of ''Notice of Construction'' review fees, and requirements for public notice and comment. Furthermore, Section 6.07(c)(3) requires the utilization of the best available control technology (BACT) for all air contaminants emitted by new and modified stationary sources.

Regulation III, Article 2 establishes additional requirements for new and modified sources of toxic air contaminants and applies to all sources required to submit a ''notice of construction and application for approval'' under Regulation I, Article 6 except for certain source categories for which PSAPCA has established T–BACT by rule. Section 2.01 ''Applicability'' states that Article 2 applies to all sources of toxic air contaminants except for the following source categories for which PSAPCA has established T–BACT by rule: asbestos removal operations, chromic acid plating and anodizing tanks, solvent metal cleaners, perchloroethylene dry cleaning systems, petroleum solvent dry cleaning systems, gasoline storage and dispensing operations, graphic arts systems, can and paper coating operations, motor vehicle and mobile equipment coating operations, polyester/vinylester/gelcoat/resin operations, coatings and ink manufacturing, and ethylene oxide sterilizers and aerators. Note that sources exempt from the additional requirements of this section are not exempted from the requirement of Regulation I, Article 6 ''New Source Review.'' Section 2.02 ''National Emission Standards for Hazardous Air Pollutants'' requires all sources subject to Article 2 to comply with any applicable provision of 40 CFR part 61. Section 2.03 ''New or Altered Toxic Air Contaminant Sources'' requires that no ''Notice of Construction and Application for Approval'' shall be issued under Regulation I, Article 6 for a new or modified source subject to

Article 2 unless the source owner or operator demonstrates that the toxic air contaminant emissions from the source will not result in the exceedence of any Acceptable Source Impact Level (ASIL) contained in Appendix A of Regulation III and does not otherwise cause an air pollution problem.

These PSAPCA regulations have previously been approved as part of the Washington SIP for control of criteria pollutants. They also meet all of EPA's requirements for a permit to construct program to establish Federally enforceable limitations on new and modified stationary sources of HAP. Furthermore, the WDOE has certified that, pursuant to Washington State law, the PSAPCA regulations are at least as stringent as corresponding State regulations, in this case, WAC 173–460 which EPA is also proposing to approve. EPA is therefore proposing to approve these PSAPCA regulations under the authority of section 112(l) of the Act. Note that EPA is proposing to approve WAC 173–460 which is applicable statewide and, by State law, remains in effect in all areas of the State regardless of any local agency regulations. If PSAPCA Regulation I, Article 6 or Regulation III, Article 2 is revised or revoked, PSAPCA is approved to implement WAC 173–460 as the new source review program for HAP in PSAPCA's jurisdiction until such time as EPA approves the revision or revocation of PSAPCA's regulations.

2. Voluntary Limits on Emissions

The new section for voluntary limits on emissions (WAC 173–400–091) provides a mechanism for the owner or operator of a source to apply for, and obtain, enforceable conditions that limit the source's potential to emit. The provisions of this section are applicable, as a matter of State law, to any air contaminant and not just the criteria pollutants regulated under the EPA-approved Washington SIP. In addition to requesting approval into the SIP, WDOE has also requested approval of this section under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP. Approval under section 112(l) is necessary because the proposed SIP approval discussed in Section II.B.4. above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).[1] However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

The EPA believes that the five approval criteria for approving State operating permit programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving State operating permit programs under section 112(l) of the Act. The November 3, 1993 guidance document entitled ''Approaches to Creating Federally Enforceable Emissions Limits,'' signed by John S. Seitz, Director, OAQPS, indicated that this mechanism could be extended to create Federally enforceable limits for emissions of HAP if the program were approved pursuant to section 112(l) of the Act. The June 28, 1989 notice does not address HAP simply because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants. In addition to meeting the criteria in the June 28, 1989 notice, a State operating permit program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any section 112 standards or requirements; (2) is supported by adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act. The EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as State operating permit programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to State operating permit programs, will mirror those set forth in the June 28, 1989 **Federal Register** notice. The EPA currently anticipates that since State operating permit programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. The EPA is therefore proposing approval of this section now so that permitting authorities in Washington may begin to issue Federally enforceable regulatory orders as soon as possible.

As discussed in Section II.B.4. above, EPA believes that this section meets the approval criteria specified in the June 28, 1989 **Federal Register** notice. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes this section contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989 notice is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources. Regarding the requirement for adequate resources, the EPA believes WDOE has demonstrated that it can provide for adequate resources to support the synthetic minor program. Permitting authorities currently cover sources not subject to title V under a ''registration'' program which assesses fees adequate to cover the costs of implementing and enforcing the terms of regulatory orders issued under this section. The EPA will monitor each permitting authority's implementation of this section to ensure that adequate resources are in fact available. The EPA also believes that this section provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in this section would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

EPA therefore, proposes to approve WAC 173–400–091 under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval to this section, ''regulatory orders'' issued pursuant to the EPA-approved WAC 173–400–091, and terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such orders were issued prior to EPA approval of this section. However, such orders would have to

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

have been issued after the effective date of WAC 173–400–091 (i.e., September 20, 1993) in accordance with all of the provisions set forth in that Section. Sources could, thereafter, rely on ''regulatory orders'' issued pursuant to this section as a means to limit their potential to emit of HAP in order to avoid requirements which would otherwise apply to a ''major stationary source'' of HAP. EPA requests comment on the appropriateness of making Federally enforceable the terms and conditions of an order that was issued prior to EPA's approval of a State or local rule, provided the order itself complied with all of the requirements of the EPA-approved rule.

IV. Summary of Action

EPA is soliciting public comment on its proposed approval in part and disapproval in part of revisions to the State of Washington Implementation Plan. Specifically, EPA is proposing to approve:

WAC 173–400 as in effect on September 20, 1993, except for the following sections: –040(1)(c) and (d); –040(2); –040(4); the second paragraph of –040(6); the exception provision in –050(3); –070(7); –075; –115; –120; –131; –136; –141; and –180.

EPA is proposing to disapprove the following:

WAC 173–400–040(1)(c) and (d), the second paragraph of –040(6), the exception provision in –050(3), –120, –131, –136, –141, and –180.

EPA is proposing to take no action on the following:

WAC 173–400–040(2), –040(4), –070(7), –075, and –115.

Note that WAC 173–400–114 was not submitted for inclusion in the Washington SIP.

EPA is also soliciting public comment on its proposed approval of certain State and local agency regulations pursuant to the authority of section 112(l) of the Act. Specifically, EPA is proposing to approve the following:

WAC 173–460 as in effect on February 14, 1994;

WAC 173–400–091; –110; 112; 113; and 171 as in effect on September 20, 1993;

SWAPCA Regulation 460 as in effect on June 15, 1993; and

PSAPCA Regulation I, Article 6 as in effect on September 17, 1993 and

Regulation III, Articles 1 and 2 as in effect on September 17, 1993.

Interested parties are invited to comment on all aspects of this proposed approval in part and disapproval in part. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by March 24, 1995, will be considered in the final rulemaking action taken by EPA.

Administrative Review

This action has been classified as a Table 2 SIP action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2224), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted Table 2 SIP actions from E.O. 12866 review.

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Similarly, approvals of State rules under section 112(l) do not create any new requirements. Therefore, because the Federal SIP approval and the section 112(l) approval do not impose any new requirements, I certify that they do not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or approval of any State rules pursuant to section 112(l). Each request for revision to any SIP or approval under section 112(l) shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

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

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

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

It has been determined that the proposed approval of the State and local air toxics rules under section 112(l) is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects

40 CFR Part 52

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

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: February 9, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–4291 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA24–1–6519b; FRL–5143–8]

Approval and Promulgation of State Implementation Plans: Washington

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 Washington for the Northwest Air Pollution Authority (NWAPA). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for the control of air pollution in Island, Skagit, and Whatcom Counties. In the Final Rules Section of this **Federal Register**, the 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 amendment 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 this proposed rule, no further activity is contemplated in relation to this rule. If the 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 document.

DATES: Comments on this proposed rule must be received in writing by March 24, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV–11, Olympia, WA 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT–082), EPA, Region 10, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: January 9, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–3863 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–29–01–6537; A–1–FRL–5156–9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Emission Banking, Trading, and Averaging

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the approval of a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision establishes a program of emission reduction credit (ERC) banking and trading whereby companies who reduce emissions below the level required by State and federal regulation can ''bank'' the surplus reductions for use at a later date or for transfer to another party. This program has been adopted as a voluntary economic incentive program pursuant to EPA's interim guidance on Economic Incentive Programs. The intended effect of this action is to facilitate cost-effective compliance with other emission reduction requirements required by the Massachusetts SIP. This action is being taken under the Clean Air Act.

DATES: Comments must be received on or before March 24, 1995.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203–2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 565–9024.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1993, EPA published proposed rules for Economic Incentive Programs (58 FR 11110). The proposal set forth Economic Incentive Program (EIP) rules which could be adopted by certain ozone and carbon monoxide nonattainment areas which were mandated by sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Clean Air Act (Act) to use or consider as one of three options the use of an economic incentive program to correct attainment plan deficiencies. The notice also served as interim guidance for States to develop discretionary EIPs which is allowed for any criteria pollutant in all areas.

On February 9, 1994, the Massachusetts Department of Environmental Protection (DEP) submitted 310 CMR 7.00 appendix B: Emission Banking, Trading, and Averaging as a revision to its State Implementation Plan (SIP). This regulation was submitted as a discretionary EIP and is described as emission limiting due to the fact that the regulation places limits on total mass emissions, emission related parameters, or specifies levels of emission reductions that participating sources must meet. The regulation is designed to utilize a federally enforceable permit mechanism or single-source SIP revisions to ensure the enforceability of the ERCs. It replaces the former 310 CMR 7.00 appendix B which dealt exclusively with emissions averaging.

The regulation deals separately with ERC banking and trading and with emissions averaging. Section 310 CMR 7.00 appendix B(3) establishes the requirements of the ERC banking and trading portion of the program by which persons and companies who reduce emissions below the level required by State and federal regulation can ''bank'' the surplus reductions for use at a later date or for transfer to another party. The goal of this part of the program is to encourage the creation and trading of surplus ERCs for the purpose of offsets, netting, and cost-effective compliance without interfering with any applicable requirements concerning attainment, reasonable further progress, or any other applicable air pollution control requirements. As such, 310 CMR 7.00 Appendix B(3) is intended to promote innovative and cost-effective

approaches to emission reduction requirements adopted by Massachusetts.

Section 310 CMR 7.00 appendix B(4) is the portion of the program designated for emissions averaging, or bubbling. However, that portion of the regulation was not part of the February 9, 1994 SIP submittal. Section 310 CMR 7.00 appendix B(4) of the regulation has been reserved and is expected to be submitted in the coming months for inclusion into the Massachusetts SIP.

EPA Evaluation and Proposed Action

As submitted, 310 CMR 7.00 appendix B is approvable as a non-generic [1] Economic Incentive Program (EIP). This means that although these regulations provide the general requirements for applying for and implementing an approvable trade under the EIP guidance, the use of all Emission Reduction Credits (ERCs) must be made federally enforceable through a second step, such as the issuance of a federally enforceable permit or as a case-specific SIP revision. Due to a lack of specificity in the emission quantification, compliance assurance, and public participation procedures, these regulations do not qualify as a fully generic EIP for emissions banking and trading. Therefore, this approval does not provide Massachusetts with the authority to issue documents to make ERC generation or use federally enforceable. At a minimum, EPA will still need to review and concur on any documents which are issued by the DEP for ERC use.

In addition to case-specific SIP revisions, there are several available mechanisms for making State documents federally enforceable in the absence of a fully generic EIP. Since documents issued under any of these mechanisms would include public participation procedures, Region I would be able to ensure that replicable and enforceable procedures are incorporated as part of each trade. Other than case-specific SIP revisions, the following three mechanisms could be used for making State documents federally enforceable in the absence of a fully generic EIP. However, as indicated in 310 CMR 7.00 appendix B(3)(g), ERCs generated from the application of mobile source or demand-side management measures would need to be approved through the source-specific SIP revision process, to the extent the specific emissions quantification, compliance assurance, and public participation procedures have not already been approved by EPA as part of the SIP.

First, in the case where Massachusetts issues a preconstruction permit to the owner/operator of a facility seeking to generate and/or use ERCs as offsets under their SIP-approved New Source Review (NSR) program (310 CMR 7.00 appendix A), these banking and trading regulations would be sufficient for the State to set the necessary federally enforceable conditions. Second, at such time as Massachusetts has an EPA-approved title V operating permit program, the State could also use those permits at subject sources to make the necessary conditions of ERC generation or use federally enforceable. However, since Massachusetts does not yet have an approved title V operating permit program, this is not an option.

Alternatively, in the case where state operating permits are issued pursuant to a program which has been approved into the SIP as meeting EPA's June 28, 1989 guidance, ''Requirements for the Preparation, Adoption, and Submittal of Implementation Plans'' (54 FR 27274), the State could also use those permits to set the federally enforceable conditions for ERC generation or use. At the time Massachusetts proposed changes to 310 CMR 7.00 appendix B, they also proposed changes to 310 CMR 7.02: Plan Approval and Emission Limitations to allow the State to issue to existing sources permits which would meet the EPA's June 1989 guidance. However, since these changes have not been adopted by the State, this is not a viable option at this time.

One issue with the approval of 310 CMR 7.00 appendix B as an EIP framework concerns the provisions which appear to allow a source to accumulate and potentially use ERCs, during years other than the year in which the credits were generated (i.e., inter-temporal use of credits). Historically, EPA has only considered continuous streams of ERCs to be eligible for banking and use on a fixed tons per year basis. In the event that a portion of the continuous stream of credits was not used in a given year, that unused portion of total yearly credit was not normally allowed to be accumulated for use in later years. Similarly, where emission credits were generated by actions which produced only a limited stream of credits, such discrete ERCs were normally only considered surplus during the period of their generation.

As submitted, the Massachusetts' banking and trading regulations deal almost exclusively with the creation (i.e., banking) of ERCs. However, appendix B(3)(d)(2)(d) of 310 CMR 7.00 appears to allow ERCs generated from an action of limited duration (e.g., the use of natural gas instead of coal at a powerplant for one summer season), or the unused portion of ERCs generated from ongoing actions (e.g., reductions from the installation of control equipment), to be banked for use in any future year, including years other than the one in which the credit was generated. Appendix B (3)(d)(2)(d) also specifically states that the use of such accrued credits will be limited by the limits defined by 310 CMR 7.00, which include the requirement that reductions be surplus (i.e., not relied upon for any applicable attainment or reasonable further progress (RFP) milestone demonstration). Therefore, the question of whether accumulated reductions in emissions are surplus only arises with the use of such ERCs.

Under 310 CMR 7.00 appendix B, there are essentially two eligible uses of ERCs: to meet New Source Review (NSR) emissions offsetting requirements and to meet Reasonably Available Control Technology (RACT) limits. Currently, Massachusetts' NSR regulations explicitly require that offsetting credits be consistent with RFP. As for using ERCs to average between sources to meet RACT requirements, Massachusetts currently has no generic authority to allow emissions averaging. Therefore, in either case, the use of ERCs will still need to be made federally enforceable through a second step in the process which involves EPA review and concurrence. EPA's approval of any inter-temporal ERC trade will be predicated on the State documenting how such use of ERCs is consistent with the RFP and attainment plans and areawide RACT requirements applicable at that time. Therefore, since 310 CMR 7.00 appendix B deals almost exclusively with the creation (i.e., banking) of ERCs, and since this notice proposes only to approve 310 CMR 7.00 appendix B as a non-generic EIP, the credit accumulation provisions do not pose any contradiction to the requirements of the Clean Air Act.

Similarly, for the State to receive full approval of an emissions banking and trading EIP, including the generic authority to issue federally enforceable trading documents with inter-temporal banking and trading, they would need to meet an additional requirement to those

[1] EPA's Emission Trading Policy Statement (ETPS) promulgated on December 4, 1986, defines ''generic rule'' as a rule that assures that emissions trades otherwise requiring case-by-case SIP revisions under sections 110(j) and 110(a)(3) of the Clean Air Act will be evaluated under State procedures that are sufficiently replicable in operation to guarantee that emission limits produced under the rule will not interfere with the timely attainment and maintenance or jeopardize PSD increments or visibility (51 FR 43850).

deficiencies listed above (i.e., specification of emission quantification, compliance assurance, and public participation procedures). Namely, the State would need to demonstrate that any potential one-time or carry-over ERCs are or will be consistent with the applicable attainment plan or demonstration, reasonable further progress (RFP) plan or milestone demonstration, and surplus to any applicable areawide RACT emission reduction requirements.

Essentially, this means that the State would need to submit documentation showing that the SIP requires, or will require, reductions equivalent to all potential one-time or carry-over ERCs beyond those reductions required from any applicable RACT, RFP, and/or attainment plan regulations, during the year(s) in which such ERCs are allowed to be used. Alternatively, the State could show that their adopted RACT, RFP, and/or attainment control strategies provide for equivalent reductions below the appropriate RFP or attainment target levels, and any applicable areawide RACT requirements. For example, if a State wanted to allow the use of 10 tons per typical summer day from a previous year, the State would need to show that its adopted control strategies provide for reductions that would create a 10 ton per day excess below the appropriate RFP or attainment target level and RACT requirements.

Additionally, appendix B(3)(g)(5) of the rule generally allows the bank to retain credits without confiscation from the State. However, the regulations also provide the State with the authority to make adjustments, including confiscation, to banked credits if needed for Rate-of-Progress (ROP), Reasonable Further Progress (RFP), or attainment requirements, as stated in appendix B(3)(l). According to appendix B(3)(l), the State would need to revise the SIP to take such action. EPA approves these provisions.

Finally, as mentioned above, although subsection (4) of the regulation has been reserved for the emissions averaging (bubbling) provisions, it was not submitted as part of the February 10, 1994 submittal. Therefore, until such time as a separate SIP revision allowing emissions averaging is approved, no generic emissions averaging would be allowed by approval of these rules.

Based on the issues discussed above, EPA is proposing to approve this revision to the Massachusetts SIP. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Proposed Action

EPA is proposing approval as a non-generic economic incentive program of 310 CMR 7.00 appendix B, as submitted to the EPA on February 9, 1994, as part of the Massachusetts SIP.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

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

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 31, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–4296 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–5160–3]

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: The EPA is extending the period for public comment regarding the Agency's proposed standards for hazardous air pollutant emissions from wood furniture manufacturing operations.

DATES: Written comments on the proposed rule must be received on or before March 23, 1995. Written comments pertaining only to the proposed test Method 311 must be received on or before April 24, 1995. Comments should be submitted in duplicate, and on computer disk, if possible.

ADDRESSES: Send comments to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A–93–10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket. Docket No. A–93–10, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall,

Room M–1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. Telephone (202) 260–7548. FAX (202) 260–4400. The proposed regulatory text, proposed test Method 311 and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

For information concerning the proposed standards, contact Dr. Madeleine Strum at (919) 541–2383, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For further information concerning the proposed test Method 311, contact Mr. Gary McAlister at (919) 541–1062, Source Categorization Group B, Emissions Monitoring and Analysis Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 6, 1994, EPA published proposed standards to limit emissions of hazardous air pollutants (HAP) from existing and new wood furniture manufacturing operations located at major sources. The proposed standards implement section 112(d) of the Clean Air Act as amended, which require the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The EPA also proposed Method 311, to be used to assist in demonstrating compliance with the proposed emission limitations.

The comment period was scheduled to close on February 21, 1995. Industry has requested a 60-day extension of the comment period to complete testing of the proposed test Method 311. In response to this request, the Agency is extending the comment period for the proposed Method 311 to April 24, 1995. The comment period for the proposed rule, however, will be extended by only 30 days, and is thus extended to March 23, 1995. All interested parties are encouraged to submit comments prior to that date.

Dated: February 16, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–4454 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 63 and 430

[FRL–5156–5]

RIN 2060–AD03 and 2040–AB53

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category; National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On December 17, 1993, EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry (58 FR 66078). This action announces the availability of additional data that EPA will consider for the promulgation of hazardous air pollutant emission standards for this industry.

DATES: Comments are not solicited at this time.

ADDRESSES: The data being announced today has been placed in Air Docket A–92–40. The docket is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Najarian, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5393.

SUPPLEMENTARY INFORMATION: On December 17, 1993 (58 FR 66078), EPA proposed standards to reduce the discharge of water pollutants and emissions of hazardous air pollutants from the pulp, paper, and paperboard industry. The period for receiving public comments on the proposed rule ended on April 18, 1994; however, EPA stated in the preamble to the proposed rule that various industry groups were collecting air emissions data that would not be available until after the comment period and that the Agency would still consider that data for the promulgation of the air emission standards.

The additional data being announced today includes the following items located in Air Docket A–92–40: (1) A 16-mill study conducted by the National Council of the Paper Industry for Air and Stream Improvement (NCASI), items II–I–77 through II–I–79, IV–D–8, IV–D1–20 through IV–D1–22, IV–J–1 through IV–J–4, IV–J–6 through IV–J–14, and IV–J–16; (2) a 10-mill study conducted by International Paper, items IV–J–18 through IV–J–27; (3) a 5-mill study conducted by the Texas Paper Industry Environmental Committee, items II–I–13 to II–I–18; (4) a condensate study, items IV–D1–16 and IV–D1–18. NCASI prepared summaries of their testing program in NCASI technical bulletins, items IV–D1–29, IV–D1–29A, IV–D1–31, IV–D1–33 through IV–D1–35, IV–D1–38, IV–D1–39, IV–D1–41, and IV–D1–42. EPA has also prepared draft summaries of the NCASI and Texas studies, items IV–A–2 and IV–A–3, respectively.

EPA is not soliciting comment on the new data at this time so that the public will have an expanded opportunity to review the data. The reports added to the Air Docket consist of multi-volume test reports from numerous testing programs and summaries of two of the testing programs. The Agency will solicit comment on these data in a subsequent notice.

EPA also anticipates that additional data regarding both air emissions and effluent discharges will be published after today's notice. An additional announcement will be posted at a later date presenting further data and soliciting comments of all announced data.

Dated: February 13, 1995.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 95–4293 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[A–1–FRL–5156–8]

Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend by one year the attainment date for the Hancock and Waldo Counties, Maine ozone nonattainment area, a marginal nonattainment area. This proposal is based in part on monitored air quality readings for the national ambient air quality standard for ozone during 1993.

DATES: Comments on this proposal must be received by March 24, 1995.

ADDRESSES: Comments on this proposal should be submitted to: Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Phone: 617–565–3244.

SUPPLEMENTARY INFORMATION:

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act as amended in 1990 (CAA) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified marginal through extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

The Hancock and Waldo Counties, Maine area was designated nonattainment and classified marginal for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1993.

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone marginal nonattainment areas, the three-year period is 1991–93. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

> Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—
>
> (A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and
>
> (B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.
>
> No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following, minimum, conditions: (i) The State requests a one-year extension; (ii) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (iii) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA Action

EPA is today proposing to grant a one-year extension of the attainment date for the Hancock and Waldo Counties, Maine nonattainment area. Air Quality monitors for this area revealed two exceedances of the ozone National Ambient Air Quality Standard during the three year period from 1991 to 1993. Both exceedances occurred in 1991, at a monitor located in Hancock County at a site operated by the National Park Service. The site had data capture problems in both 1991 and 1992. In 1993 the Maine Department of Environmental Protection took over maintenance of the site and data capture improved greatly. Since 1991 the site has not had any exceedances of the NAAQS.

EPA is proposing that the requirements for a one-year extension of the attainment date have been fulfilled as follows: (i) The State requested a one-year extension in a letter, dated April 11, 1994, from Governor McKernan to EPA Region I Administrator, John Devillars; (ii) in that same letter Maine certified that the State is implementing the EPA-approved SIP; and (iii) the area has monitored no exceedance during 1993.

Accordingly, EPA is proposing to establish a new attainment date for the Hancock and Waldo Counties, Maine area as November 15, 1994. If this proposal is finalized as proposed, the area would remain a marginal ozone nonattainment area, and the requirements for EPA to determine by May 15, 1994 whether the area has reached attainment or whether the area should be reclassified upwards would be extended by one year. Instead, under section 181(b)(2) of the CAA, EPA would determine by May 15, 1995 whether the area has met its revised attainment date based on air quality data during the years 1992–94, except that EPA would consider a second one-year extension if requested by the State.

Solicitation of Public Comment

As described above, EPA is proposing to extend the attainment date of the Hancock and Waldo Counties, Maine ozone nonattainment area for one year, until November 15, 1994. Public comment is solicited on this proposal. All comments received by the close of the public comment period will be considered in the development of EPA's final decision.

Regulatory Process

Under E.O. 12866, this action has been exempted from the Office of Management and Budget's review.

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. Attainment date extensions under section 181(a)(5) of the CAA do not create any new requirements; therefore, I certify that this action will not have a significant impact on small entities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 25, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–4295 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300379; FRL–4934–8]

RIN 2070–AC18

Extended Tolerance on Dried Hops for Imidacloprid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the tolerance for residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (common name ''imidacloprid'') in or on dried hops at 3.0 parts per million (ppm). On its own inititative, EPA proposes to extend the tolerance to allow time to review a petition from the Interregional Research Project No. 4 (IR-4).

DATES: Written comments, identified by the document control number, [OPP-300379], may be submitted on or before March 24, 1995.

ADDRESSES: Comments may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20604. In person, bring comments to: Rm. 1132, CM #2, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given below, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: On its own initiative and pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), the Agency established in 40 CFR 180.472 a time-limited tolerance for the residues of imidacloprid on dried hops at 3.0 parts per million (ppm) (see the **Federal Register** of June 28, 1994 (59 FR 33204)). EPA established this tolerance because EPA had granted a petition for an emergency exemption under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136p, for the use of imidacloprid on hops in the States of Washington, Oregon, and Idaho; imidacloprid is used in other countries which export hops to the United States; and the database for imidacloprid is relatively complete. At that time, a third field residue trial was outstanding. Since then, the Interregional Research Project No. 4 (IR-4) has submitted a pesticide petition to the Agency requesting that a tolerance be established in or on dried hops. This petition is currently in review. The Agency may not complete its review of the IR-4 petition before the time-limited tolerance would expire. EPA does not believe that its risk assessment will significantly change as a result of the IR-4 petition. Therefore, the Agency is proposing to extend this tolerance for an additional 1-year period, i.e., to June 28, 1996.

In the **Federal Register** of November 30, 1994 (59 FR 61278), EPA revised 40 CFR 180.472 and removed the time-limited designation for commodities listed in paragraph (a). The listing for ''Hops, dried'' at 3.0 ppm inadvertently was left in paragraph (a) in the new list of commodities without a time-limited designation. Hops should have retained the time-limited designation, June 28, 1995, and been moved to a new paragraph. This change was made by a technical amendment published in the **Federal Register** of February 22, 1995.

All relevant materials have been evaluated. The toxicology data considered in support of the tolerance include:

1. A three generation rat reproduction study that showed a NOEL of 100 ppm (8 mg/kg/bwt); rat and rabbit teratology studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

2. A 2-year rat feeding/carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females) for noncarcinogenic effects, which included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm.

3. A 1-year dog feeding study that showed a NOEL of 1,250 ppm (41/mg/kg/bwt).

4. A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under the conditions of the study and had a NOEL of 1,000 ppm (208 mg/kg/day).

There is no cancer risk associated with exposure to this chemical. Imidacloprid has been classified as a ''Group E'' (no evidence of carcinogenicity for humans) carcinogen by the OPP Reference Dose (RfD) Committee.

The reference dose (RfD), based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000984 mg/kg/bwt/day and utilizes 2% percent of the ADI.

The nature of the residue in plants and livestock is adequately understood. Spent hops are not considered a poultry feed item; therefore, secondary imidacloprid tolerances for poultry and eggs are not required. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety in plants using a permanganate oxidation, silyl derivatization, and capillary GC-MS-selective ion monitoring. The magnitude of the residue crop field trial data for imidacloprid on hops indicates that residues of total imidacloprid will not exceed the proposed tolerance when the formulations are used as directed. The extension for this use will expire on June 28, 1996.

This pesticide is considered useful for the purposes for which the tolerances are sought. Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below. Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register**

that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested person are invited to submit written comments on the proposed regulation. Comments must bear notation indicating the document control number, [OPP-300379]. All written comments filed in response to this document will be be available in the Public Docket and Freedom of Information Section, at the addressed given above from 8 a.m. to 4 p.m, Monday through Friday, except legal holidays.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing exemption from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to as follows:

Authority: 21 U.S.C. 346a and 371.

2. In 180.472, by revising paragraph (d), to read as follows:

§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.

* * * * *

(d) A time-limited tolerance, to expire June 28, 1996, is established permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Hops, dried	3.0

[FR Doc. 95–4185 Filed 2–21–95; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 2E4071/P603; FRL 4936–2]

RIN 2070–AC18

Methyl Anthranilate; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of the biochemical methyl anthranilate in or on the raw agricultural commodities blueberry, cherry, and grape when the pesticide is used in accordance with good agricultural practices. The Interregional Research Project No. 4 (IR-4) requested these exemptions in a petition submitted to EPA.

DATES: Comments, identified by the document control number, [PP 2E4071/P603], must be received on or before March 24, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4071 to EPA on behalf of the Agricultural Experiment Station of Washington. Pesticide petition 2E4071 requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish exemptions from the requirement of a tolerance for residues of the biochemical methyl anthranilate in or on the raw agricultural commodities blueberry, cherry, and grape. Methyl anthranilate will be applied as a dilute foliar spray to these crops to repel birds and reduce bird depredation. Methyl anthranilate is a natural constituent of food that can be found in grape and citrus. Methyl anthranilate is also synthetically produced and used in the purified form (not less than 99 percent pure) as a flavoring agent in beverages, ice cream, candy, baked goods, gelatins, puddings, and chewing gum. The synthetic product mimics the chemical structure and function of the natural plant constituent. Methyl anthranilate is listed by the Food and Drug Administration (FDA) as a flavoring compound under 21 CFR 182.60, and is classified generally recognized as safe (GRAS) by the Expert Panel of the Flavor and Extract Manufacturer's Association (FEMA). Registrants who produce end-use products for this active ingredient that are intended for use on blueberry, cherry, or grape will be required to use methyl anthranilate produced to meet or exceed U.S. Food Chemical Codex and U.S. Pharmacopoeia specifications.

Residue data submitted with the petition indicate that residues of methyl anthranilate would not exceed 35 parts per million (ppm) on blueberry, cherry, and grape from the proposed use. The incremental dietary exposure to methyl anthranilate is not significant compared to naturally occurring levels, or levels resulting from use of the chemical as a flavoring agent. For example, naturally occurring levels of methyl anthranilate are reported at 33 ppm in concord grapes, and the use of methyl anthranilate as a flavoring agent results in residues of approximately 30 ppm in

baked goods and hard candies and almost 400 ppm in chewing gum.

Methyl anthranilate is hydrolyzed in the small intestine to form an alcohol and either anthranilic acid or an *N*-alkyl anthranilic acid. Anthranilic acid is a common human metabolite that is excreted in the urine or converted to anthranilic acid glucuronide prior to excretion.

The available information is sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from dietary exposure resulting from the proposed use of methyl anthranilate on blueberry, cherry, and grape.

There is also no reasonable expectation of secondary residues in meat, milk, poultry, or eggs from the proposed use.

No enforcement actions based on the level of residues in food are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to the exemption from the requirement of a tolerance.

Based on the information and data considered, the Agency concludes that tolerances are not needed to protect the public health. Therefore, it is proposed that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4071/P603]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346A and 371.

2. In Subpart D, by adding new § 180.1143, to read as follows:

§ 180.1143 Methyl anthranilate; exemption from the requirement of a tolerance.

Methyl anthranilate, a biochemical pesticide, is exempt from the requirement of a tolerance when used in accordance with good agricultural practices on the following raw agricultural commodities: Blueberry, cherry, and grape.

[FR Doc. 95–4306 Filed 2–16–95; 2:39 pm]
BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

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

Scenery Fire Recovery; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Scenery Face Fire burned approximately 4700 acres of Kootenai National Forest system lands in the late summer of 1994. The Libby Ranger District on the Kootenai National Forest intends to prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of opportunities designed to recover economic value of burned timber, reduce fuel accumulations, rehabilitate existing sediment sources and protect long-term soil productivity. These objectives would be accomplished through salvage harvest of fire-killed trees; reforestation of some harvested and severely burned areas; fuels reduction in harvested areas and restoration of non-essential roads. The Scenery decision area is located approximately 1 air mile west of Libby, Montana.

The proposal's actions to salvage fire-killed trees and reforest burned areas, reduce fuels, and restore roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area.

DATES: Written comments and suggestions should be received by no later than March 24, 1995.

ADDRESSES: The Responsible Official is Lawrence A. Froberg, District Ranger, Libby Ranger District, Kootenai National Forest. Written comments and suggestions concerning the scope of the analysis should be sent to Lawrence A. Froberg, District Ranger, Libby Ranger District, 12557 US Hwy 37 N, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Leanne Marten, NEPA Coordinator, Libby Ranger District. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: During the night of August 14–15, 1994, a lightning storm started 207 fires on the Kootenai National Forest in northwest Montana. Several of these fires occurred on the Libby Ranger District. The Scenery Fire Recovery EIS is being prepared in response to conditions resulting from one of the largest of these fires, the 4700 acre Scenery Face Fire. An interdisciplinary landscape analysis team is using an ecosystem based approach to assess the fires affects and identify management opportunities that could be implemented to move the postfire landscapes toward a desired ecological condition.

Burn intensities in the Scenery wildfire varied considerably. Within the fire perimeters approximately 2200 acres burned at moderate intensity (average 55% tree mortality) and approximately 2500 acres burned at low intensity (average 25% mortality). The fire burned within the Cabinet Face East Roadless Area #671.

The Scenery decision area contains approximately 3,300 acres within the Kootenai National Forest in Lincoln County, Montana. The legal location of the decision area is as follows: Sections or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, and 30 and Township 31 North, Range 32 West; Sections or portions of Sections 24 and 25 of Township 31 North, Range 33 West; Principle Meridian. The land in and adjacent to the decision area is primarily federal ownership under the jurisdiction of the Forest Service with some intermixed private ownership.

Proposed Action

The primary purpose of the project is to recover valuable timber products from trees burned by the Scenery Face wildfire that occurred in 1994 (while maintaining ecological processes), with the secondary benefit of reducing fuel loads. Actions are also proposed to enhance watershed recovery and improve grizzly bear habitat security. The Forest Service proposes to harvest approximately 2.1 million board feet of timber by salvaging fire-killed trees and dying trees on approximately 350 acres of forest land outside riparian protection areas. Only trees that were killed, or are expected to die as a result of the fires, would be harvested. The proposal includes prescribed burning of about 67 acres to reduce fuel loads in harvested areas. An estimated 263 acres of proposed salvage units would be planted with conifer seedlings to help meet desired conditions for species diversity. The Forest Service also proposes to scarify and revegetate an estimated 4 miles of existing non-essential roads to reduce sediment and water yields, and improve grizzly bear habitat security. Non-essential roads are those that are no longer considered a necessary part of the permanent transportation system. Additional road access restrictions may be needed to provide adequate security areas for grizzly bears, however identification of specific road closure proposals is pending further analysis.

The decision area includes a portion of the Cabinet Face East Roadless Area #671. Approximately 330 acres of timber salvage and approximately 250 acres of reforestation would occur within the roadless area. No road construction is proposed within the roadless area. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan.

Due to the high level of tree mortality in proposed harvest units, most harvested areas would resemble clearcut or seed-tree silvicultural methods. Only those live trees which must be cut to facilitate logging fire-killed trees would be harvested. Timber harvest would be done by skyline and helicopter yarding, designed to result in minimal ground disturbance, risk of erosion, and compaction.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The decision area contains four MA's: 11, 12, 14 and 19. Briefly described, MA 11 is managed to maintain or enhance the winter-range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer-range

habitat effectiveness for big-game species and produce a programmed yield of timber. MA 14 focuses on maintaining or enhancing grizzly bear habitat, reducing grizzly/human conflicts, assisting in the recovery of the grizzly bear, realizing a programmed yield of timber production, and providing for the maintenance or enhancement of other wildlife species, especially big game. MA 19 is managed to protect soil stability and water quality by maintaining the vegetation in a healthy condition and minimizing surface disturbance. Timber salvage and fuels reduction is proposed in MA 12.

Preliminary Issues

Several preliminary issues of concern have been identified by the Forest Service. These issues are briefly described below:

- Water Quality—Streams in the decision area have been impacted by the Scenery Face wildfire. How would the proposed action affect water yield, sediment production, stream stability, and recovery from the wildfire?
- Timber Supply—Much of the fire-killed timber will quickly lose its commercial value due to rapid deterioration. To what extent does the proposed action recover the commercial value of fire-killed timber to help meet local and national needs?
- Activity in Roadless Areas—What effect would the proposal have on the roadless character of the Cabinet Face East Roadless Area #671?
- Grizzly Bear—The decision area lies within the recovery area for the Cabinet/Taak grizzly bear ecosystem. How would the proposal maintain and enhance grizzly bear habitat, and contribute to recovery efforts?
- Visual Quality—The units proposed can be viewed from Highway 2, the Kootenai River Road or the Bighorn Trail. To what extent will the viewshed be altered?

Forest Plan Amendment

The Kootenai National Forest Land and Resource Management Plan has specific management direction for the Scenery decision area. The Scenery proposed action is designed to maintain or improve resource conditions and move towards achieving desired ecological conditions, and is consistent with the goals and objectives of the Forest Plan. Prior to making a NEPA decision, a thorough examination of all standards and guidelines of the Forest Plan would be completed and, if necessary, plan exceptions or amendments would be addressed in the EIS.

Decisions To Be Made

The Libby District Ranger will decide the following:

Should dead and imminent dead trees within fire areas be harvested and if so how and where,

What amount, type, and distribution of watershed restoration projects, including road restoration, would be implemented,

What burned areas need to be replanted, and

If Forest Plan exception or amendments are necessary to proceed with the Proposed Action within the decision area.

Public Involvement and Scoping

An open house will be scheduled in March, to provide an opportunity for the public to review the proposed action. Consultation with appropriate State and Federal agencies will be initiated. Preliminary effects analysis indicated that the wildfires may significantly affect the quality of the human environment, and fire recovery activities have the potential to both intensify and reduce effects. These potential effects prompted the decision to prepare an EIS for the Scenery Fire Salvage.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing

The draft Scenery Fire Recovery EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1995. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The final EIS is scheduled to be completed by September, 1995. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Lawrence A. Froberg, District Ranger, Libby Ranger District, Kootenai National Forest, 12557 US Highway 37 North, Libby, MT 59923 is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. He will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: February 10, 1995.

Lawrence A. Forberg,

District Ranger.

[FR Doc. 95–4222 Filed 2–21–95; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will hold its 38th Meeting in Arlington, Virginia, on March 8–9, 1995. On Wednesday, March 8, a Business Session open to the public will convene at 9:00 a.m. in the Fairfax Room of the Holiday Inn, 4610 North Fairfax Drive. Agenda items include: (1) Chairman's Report; (2) Comments from Agencies and Organizations; (3) Recent Research Activities; and (4) Engineering Initiatives/Workshop Plans. On Thursday, March 8, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Icebreaker Notes; (3) Trip Reports; and (3) Correspondence. An Executive Session for Members of the Commission will be held following the Business Session on March 8.

Any person planning to attend 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.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–4231 Filed 2–21–95; 8:45 am]

BILLING CODE 755–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Amended Preliminary Determination: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Katt or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0498 or (202) 482–0186, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. References to the *Antidumping and Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 57 FR 1131 (January 10, 1992) (concerning correction of ministerial errors in a preliminary determination) (''Proposed Regulations'') are provided solely for further explanation of the Department's practice and procedures with respect to correction of ministerial errors. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (January 3, 1995).

AMENDED PRELIMINARY DETERMINATION: In accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act), on January 4, 1995, the Department of Commerce (the Department) made its preliminary determination that canned pineapple fruit (CPF) from Thailand was being sold at less than fair value (60 FR 2734, January 11, 1995). On January 10 and 13, 1995, we disclosed our calculations for the preliminary determination to counsel for respondents, the Thai Public Pineapple Company (TIPCO), Siam Agro Industry Pineapple and Others Public Co., Ltd. (SAICO), and Malee Sampran Factory Public Co., Ltd. (Malee), to counsel to respondent Dole Food Company, Inc. and its affiliates, Dole Packaged Foods Company and Dole Thailand, Inc. (collectively Dole) and to counsel for the petitioners, respectively, pursuant to their requests. On January 20, 1995, we received a submission from the petitioners alleging a ministerial error in the Department's preliminary determination calculations. (For specific details of this allegation and our analysis of it, see Memorandum from Gary Taverman to Barbara R. Stafford dated February 8, 1995.)

The petitioners alleged that the Department incorrectly included movement expenses in its deductions for both direct and indirect selling expenses for Dole's third country observations made on an ex-warehouse or delivered basis.

We agree that the error alleged by the petitioners is a ministerial error. This error constitutes a significant ministerial error within the meaning of the Department's Proposed Regulations in that the correction results in a difference between a dumping margin of *de minimis* and a margin greater than *de minimis. See* section 353.15(g)(4)(ii) of the Department's Proposed Regulations (57 FR 1131, January 10, 1992). Therefore, consistent with the Department's practice with respect to the correction of ministerial errors, we are amending Dole's preliminary dumping margin. The corrected dumping margin for Dole is 0.78 percent; as a result the ''All Others'' rate is now 3.92 percent.

Suspension of Liquidation

We are directing the Customs Service to correct our request to suspend liquidation in accordance with section 733(d)(1) of the Act, for all entries of CPF from Thailand.

We are directing the Customs Service to suspend liquidation of all entries of CPF from Thailand from Dole that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination notice in the **Federal Register**. Because Dole's dumping margin is now greater than *de minimis,* and margins greater than *de minimis* are included within the all others rate, we are directing the Customs Service to correct the ''All Others'' rate so that it will reflect the rates for TIPCO, SAICO, Malee, and Dole.

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of CPF from Thailand for TIPCO, SAICO, Malee and All Others that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the revised estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/Producer/ Exporter	Original margin percent	Revised margin percent
Dole	[1] 0.30	0.78
TIPCO	7.81	7.81
SAICO	9.55	9.55
Malee	1.12	1.12

Manufacturer/Producer/ Exporter	Original margin percent	Revised margin percent
All Others	6.73	3.92

[1] (De Minimis).

In accordance with section 733(f) of the Act, we have notified the International Trade Commission of our amended preliminary determination.

This amended preliminary determination is published in accordance with section 733(f) of the Act.

Dated: February 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4320 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–351–505]

Certain Malleable Cast Iron Pipe Fittings From Brazil; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from petitioners, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. This review covers Industria de Fundicao Tupy S.A. (Tupy), a manufacturer and exporter of this merchandise to the United States, and the period May 1, 1993 through April 30, 1994. The firm failed to submit a response to our questionnaire. As a result, we have preliminarily determined to use the best information otherwise available (BIA) for cash deposit and assessment purposes.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Schauer or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733/4477.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1994, the Department published in the **Federal Register** (59 FR 23051) a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on certain malleable cast iron pipe fittings from Brazil. On May 4, 1994, we received from the petitioners in this case, Grinnell Corporation, Ward Manufacturing Inc., and Stockham Valves and Fittings Co., a request to initiate an administrative review of Tupy, a manufacturer and exporter of this merchandise to the United States. On July 15, 1994, in accordance with CFR 353.22(c), we initiated an administrative review of this order for Tupy covering the period May 1, 1993 through April 30, 1994 (*see* 59 FR 36160).

The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain malleable cast iron pipe fittings, other than grooved, from Brazil. In the original order, these products were classifiable in the Tariff Schedules of the United States, Annotated, under item numbers 610.7000 and 610.7400. These products are currently classifiable under item numbers 7307.19.00 and 7307.19.90 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of BIA is appropriate for Tupy. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)) in selecting BIA. Generally, whenever a company refuses to cooperate with the Department or otherwise significantly impedes the proceeding, the Department uses as BIA the highest rate for any company for the same class or kind of merchandise from the current or any prior segment of the proceeding. When a company substantially cooperates with our requests for information, but fails to provide all the information requested in a timely manner or in the form requested, we use as BIA the higher of (1) the highest rate (including the ''all others'' rate) ever applicable to the firm for the same class or kind of merchandise from the same country from either the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest calculated rate in the review for any firm for the same class or kind of merchandise from the same country. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, et al.; Final Results of Antidumping Duty Administrative Review,* 56 FR 31692, 31704 (July 11, 1991); *see* also *Allied-Signal Aerospace Co. v. United States* 996 F.2d 1185 (Fed. Cir. 1993).

Because Tupy refused to respond to our requests for information (*see* letter from the law firm of Sonnenberg, Anderson, & Rodriguez to the Department dated October 31, 1994), we have used the highest rate ever found in this proceeding to establish its margin. This rate is 5.64 percent.

Preliminary Results of Review

We preliminarily determine the margin for this administrative review to be:

Producer/exporter	Margin
Industria de Fundicao Tupy S.A.	5.64

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service

shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 5.64 percent, the adjusted ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: February 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4321 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 021595B]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Committee will meet on February 23–24, 1995 in the Montgomery B Room of the Philadelphia Airport Days Inn, 4101 Island Avenue, Philadelphia, PA. The meeting will begin at 10:00 a.m. on Thursday, February 23 and adjourn at approximately 1:00 p.m. on Friday, February 24.

The purpose of this meeting is to review comments made on Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, including possible qualifying criteria for limited entry into the squid and butterfish fisheries and other aspects of the management program.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 15, 1995.

David S. Crestin,

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

[FR Doc. 95–4246 Filed 2–16–95; 10:14 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1995

February 15, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

A notice published on December 20, 1994 (59 FR 65531), announced that the 1995 Correlation would be available in late January. There was a further delay.

The 1995 Correlation will be available on February 21, 1995 and may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–4245 Filed 2–21–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse Final Environmental Impact Statement for England Air Force Base (AFB), Louisiana

On February 3, 1995, the Air Force issued a ROD for the disposal of England Air Force Base (AFB), Louisiana. The decisions included in this ROD have been made in consideration of the Final Environmental Impact Statement (FEIS), which was filed with the Environmental Protection Agency on November 13, 1992.

England AFB was officially closed on December 15, 1992, pursuant to the Defense Base Closure and Realignment Act (Public Law 101–510) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents certain disposal decisions which the Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations and Environment has made regarding the disposal of England AFB.

The Air Force has decided to dispose of 2279 acres of surplus property to the England Economic and Industrial Development Authority for public airport use and 0.69 acres to the City of Alexandria for continued use as a small arms pistol range and 2.91 acres to the Federal Aviation Administration (FAA)

for support of airport activities and operation of their enroute radar facility.

The uses proposed for the property by prospective recipients of property under the ROD are included in the proposed action in the FEIS and are consistent with the community's draft redevelopment plan for the base.

Any questions regarding this matter should be directed to Mr. Charles R. Hatch, Program Manager, Southwest Division. Correspondence should be sent to AFBCA/SW, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–4284 Filed 2–21–95; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 & 16 March 1995.

Time of Meeting: 0800–1700, 15 March 1995.

Place: 0800–1700, 16 March 1995. Pentagon—Washington, DC.

Agenda: The Army Science Board's Ad Hoc Study on ''ASB Space and Missile Defense Organization'' will have its 4th meeting at the Pentagon on 15 and 16 March. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matter to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 95–4220 Filed 2–21–95; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Intent To Repay to the Oregon Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Oregon Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the $42,262.39 recovered by the U.S. Department of Education (Department) as a result of final audit determinations for Chapter 1 (Local Educational Agency and Migrant Education Programs) of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1, ESEA). This notice describes the SEA's plan, submitted on behalf of the Klamath County School District (KCSD), the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before March 24, 1995.

ADDRESSES: Comments concerning the portion of the grantback that provides funds under the Chapter 1 basic programs operated by local educational agencies (LEA grants program) should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4400), Washington, D.C. 20202–6132.

All comments concerning the portion of the grantback that provides funds under the Migrant Education Program (MEP) should be addressed to Ms. Bayla F. White, Director, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4100), Washington, D.C. 20202–6135.

FOR FURTHER INFORMATION CONTACT: For the Chapter 1 LEA grants program, S. Colene Nelson, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4400), Washington, D.C. 20202–6132. Telephone: (202) 260–0979. For the MEP, Lori Ahmady, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals Building, Room 4104), Washington, D.C. 20202–6135. Telephone: (202) 260–1391. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $42,262.39 from the Oregon Department of Education (SEA) in satisfaction of claims arising from an audit of KCSD covering fiscal year (FY) 1990.

The claims involved the SEA's administration of Chapter 1, ESEA, providing financial assistance to State and local agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families (Chapter 1), as well as the special educational needs of migratory children (MEP). Specifically, the audit determinations, made by an independent auditor acting under the Single Audit Act of 1984 and upheld by the SEA, found that varying percentages of salaries and fringe benefits of five LEA employees tested were charged to Chapter 1 during FY 1990. The auditors also questioned the portion of salary and fringe benefits for one LEA employee charged to the Chapter 1 MEP. In addition, no time distribution records were available to support the charges to either program. Finally, the auditors disclosed that the early retirement pay for one employee was divided equally between the Chapter 1 program and the MEP, even though the employee had worked on these programs for only three of a total of twenty-two years with the district. The auditors, therefore, questioned 19/22 of the early retirement cost charged to Chapter 1 and the MEP grants ($1,813.64 to each). Altogether, disputed costs totaled $31,396.39 for the Chapter 1 grant, and $10,866 for the MEP grant.

The SEA, on August 24, 1992, requested a refund of the full amount of questioned costs from KCSD. On September 15, 1992, the SEA submitted a check to the U.S. Department of Education in the amount of $66,395.52, which included a recovery of $31,396.39 for the Chapter 1 program, as well as $10,866 related to the MEP. The remaining $24,133.13 resulted from audit recoveries from other Federal programs and are not part of this grantback notice.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the SEA or LEA that resulted in the audit

determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $31,696—75 percent of the principal amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of both educationally deprived children in programs administered under Chapter 1, ESEA (20 U.S.C. 2701 *et seq.*), as well as those of migratory children under the Chapter 1 MEP (20 U.S.C. 2781 *et seq.*).

According to the plan, the LEA will use the grantback funds under Chapter 1 to upgrade its existing Higher Order Thinking Skills program (H.O.T.S.). This computer-assisted instruction has been used successfully in the county for the past two years to improve the skills of educationally deprived children, and the use of the program promotes the purpose of the Chapter 1 program under which funds were allocated (see section 1001(b)).

The KCSD currently has five existing H.O.T.S. Mac Labs, which serve an average of 28 students, in grades 4 through 7. The requested grantback funds will be used to upgrade existing H.O.T.S. sites and allow for another Mac Lab site to be established at Keno Elementary School. Also, software would be purchased for the five existing Mac Labs, as well as for the new Mac Lab.

The grantback funds under the Chapter 1 MEP will be used to purchase computer hardware and software for language instruction to migratory children in four schools in the LEA.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $31,696.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995, in accordance with section 459(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 1995, submit a report to the Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: February 8, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies; and Catalog of Federal Domestic Assistance Number 84.011, Chapter 1 Migrant Education Program)

[FR Doc. 95–4247 Filed 2–21–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Savannah River Operations Office; Record of Decision: Stabilization of Plutonium Solutions Stored in the F-Canyon Facility at the Savannah River Site, Aiken, SC

AGENCY: U.S. Department of Energy.

ACTION: Record of Decision, Stabilization of Plutonium Solutions Stored in the F-Canyon Facility at the Savannah River Site, Aiken, South Carolina.

SUMMARY: The U.S. Department of Energy (DOE) has prepared and issued a Final Environmental Impact Statement (EIS) (DOE/EIS–0219, December 30, 1994), to assess the potential environmental impacts of stabilizing approximately 80,000 gallons of plutonium solutions currently stored in tanks in the F-Canyon chemical separations facility at the Savannah River Site (SRS) near Aiken, South Carolina. As long as the plutonium remains in solution there is a risk of releases and subsequent radiation exposure to workers, the public, and the environment from accidental criticality incidents, leaks, and disruptions of engineered systems from earthquakes. The Department has evaluated the impacts of alternative methods that would achieve stabilization of the solutions. The analysis reveals that the potential environmental impacts of implementing alternatives that would eliminate the risk inherent in storing plutonium in liquid form are small. Further, the impacts differ little among the alternatives. DOE currently has available the capability to process the plutonium solutions to a metal form. Given this existing capability, the potential for environmental releases that exists as a result of storing the plutonium in liquid form, and the relative lack of environmental advantages to implementing other options, DOE has decided to process the plutonium solutions to metal form using the F-Canyon and FB-Line facilities at the SRS. DOE has committed that this

plutonium metal will not be used for nuclear explosive purposes and intends to offer it for inspection by the International Atomic Energy Agency.

During the time the SRS was actively involved in nuclear material production, DOE transferred irradiated fuels and targets from SRS reactors to disassembly basins, which are water-filled pools, to allow short-lived radioactive isotopes to decay. From the pools, DOE transferred the fuel and targets to canyon facilities in F- and H-Areas, where they were chemically dissolved into liquid solutions. The useful isotopes were recovered, converted to a solid form, and either shipped to other DOE facilities or stored at the SRS. This chemical reprocessing activity has been suspended since 1992, and plutonium solutions have been stored in tanks in the F-Canyon facility since that time. The Final F-Canyon Plutonium Solutions EIS examines alternative methods for stabilizing these solutions.

FOR FURTHER INFORMATION CONTACT: For further information on the stabilization of F-Canyon plutonium solutions or to receive a copy of the Final EIS contact: A. B. Gould, Jr., NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804–5031, (800) 242–8269.

For further information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–4.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

DOE prepared this Record of Decision in accordance with the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). This Record of Decision is based on DOE's Final F-Canyon Plutonium Solutions Environmental Impact Statement, Savannah River Site, Aiken, South Carolina (DOE/EIS–0219).

The SRS occupies approximately 800 square kilometers (300 square miles) adjacent to the Savannah River, mostly in Aiken and Barnwell Counties of South Carolina, about 40 kilometers (25 miles) southeast of Augusta, Georgia, and about 32 kilometers (20 miles) south of Aiken, South Carolina. When established in the early 1950s, SRS's primary mission was to produce nuclear materials to support the defense, research, and medical programs of the United States. The present mission emphasizes waste management, environmental restoration, transition activities, and decontamination and decommissioning of facilities that are no longer needed for nuclear materials production.

In March 1992, DOE suspended chemical processing operations in the F-Canyon to address a potential safety concern. That concern was addressed; however, prior to the resumption of processing, the Secretary of Energy directed that SRS phase out chemical separations activities (i.e., reprocessing). Non-safety-related facility operations have remained shut down since that time (March 1992). Approximately 303,000 liters (80,000 gallons) of solutions containing plutonium have remained in tanks in F-Canyon since the suspension of operation.

In September 1992, the SRS completed a plan that described the actions that DOE would have to take to phase out reprocessing. The plan included actions for removing the material that remained in the canyons as a result of the suspension of chemical separation activities in March 1992. In February 1993, the Site requested approval from DOE to restart F-Canyon after the completion of operational readiness reviews conducted as part of the response to the above-mentioned March 1992 safety concern. The SRS made this startup request in light of the Secretary's direction to accelerate the transition of F-Area reprocessing facilities to a standby condition and because all contemplated actions were typical of previous facility operations.

During this same time period, DOE was drafting new requirements for operational readiness reviews necessary for the startup or restart of nuclear facilities. Under these requirements, facilities had to be able to demonstrate the capability to perform satisfactorily in relation to a broad range of topics associated with the safe operation of a nuclear facility. DOE promulgated these requirements in DOE Order 5480.31, ''Startup and Restart of Nuclear Facilities,'' which it issued in September 1993. DOE decided that the SRS should apply these requirements to the restart of the F- and H-Canyons and, in November 1993, determined that the Site should hold the proposed F-Canyon (and FB-Line) restart in abeyance until it had completed a restart review in accordance with the new Order. In January 1994, DOE determined that unless there was an emergency condition, there should be no processing in F-Canyon before the completion of an environmental impact statement.

On March 17, 1994, DOE published a Notice of Intent (59 FR 12588) to prepare an environmental impact statement on the interim management of nuclear materials at the SRS. The proposed DOE interim management actions are to stabilize those nuclear materials at the SRS that represent a health or safety concern for the public, workers, and the environment and to convert certain materials to a usable form to support DOE program needs. These proposed interim actions would be carried out while DOE makes and implements long-term decisions on the disposition of nuclear materials. DOE is addressing its long-term decisions in a Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials, for which it issued an NOI on June 21, 1994 (59 FR 31985). DOE expects that it could require 10 years or more to make and implement these long-term decisions.

In May 1994, the Manager of the Savannah River Operations Office recommended that the DOE Assistant Secretary for Defense Programs seek alternative arrangements for compliance with the National Environmental Policy Act (NEPA) under the emergency provisions of the Council on Environmental Quality NEPA Regulations, 40 CFR Part 1506.11, to allow immediate stabilization of the plutonium solutions in F-Canyon and the Mark-31 targets stored in the L-Reactor Disassembly Basin. The recommendation was based on the Manager's determination that the materials present risks to workers, the public, and the environment in the form of radiation exposure from normal operations and potential accidents, which DOE could reduce by converting the material to a solid stable form.

The Assistant Secretary for Defense Programs endorsed the Savannah River Operations Office Manager's request and asked that the DOE Office of Environment, Safety and Health perform an independent evaluation to determine if stabilization actions should proceed in advance of the completion of the Interim Management of Nuclear Materials EIS. The DOE Office of Environment, Safety and Health performed this independent evaluation in June 1994. The report from the evaluation characterized the following potential facility accidents to be of serious significance: (1) the potential for inadvertent criticality of plutonium due to precipitation of plutonium from the F-Canyon plutonium solutions, and (2) potential radiological releases to the

environment due to leakage of plutonium solutions through tank cooling coils. The loss of experienced facility personnel through resignation and retirement was an issue of marginal concern, with the recognition that this could become a serious concern if the current trend continued. The report did not include the Mark-31 targets in the materials of serious concern. DOE evaluated the request to pursue alternative arrangements for compliance with NEPA under the emergency provisions of 40 CFR 1506.11 in light of the Office of Environment, Safety and Health's evaluation and determined that the appropriate action would be to accelerate the evaluation of stabilization alternatives for the F-Canyon plutonium solutions by preparing a separate environmental impact statement on an accelerated schedule.

The vulnerabilities associated with the continued storage of the plutonium in solution have also been documented by the Defense Nuclear Facilities Safety Board (DNFSB). In April 1994, the DNFSB ''concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected. . . . The Board is especially concerned about . . . (s)everal large tanks in the F-Canyon at the Savannah River Site (that) contain tens of thousands of gallons of solutions of plutonium and trans-plutonium isotopes. . . . If an earthquake or other accident were to breach the tanks, F-Canyon would become so contaminated that cleanup would be practically impossible. Containment of the radioactive materials under such circumstances would be highly uncertain . . . therefore, the Board recommends . . . (t)hat preparations be expedited to process the dissolved plutonium and trans-plutonium isotopes in tanks in the F-Canyon at the Savannah River Site into forms safer for interim storage. The Board considers this problem to be especially urgent.''

While the Defense Nuclear Facilities Safety Board noted that no emergency presently exists, the Board also noted that the plutonium solutions in F-Canyon could present an imminent hazard within two or three years. Given that even the shortest time to complete stabilization is almost two years, the Department concluded that expediting the decision to stabilize plutonium solutions was prudent.

As noted above, DOE determined that there are safety concerns associated with plutonium solutions stored in F-Canyon that warrant consideration of actions prior to the issuance of a Record of Decision for the Interim Management of Nuclear Materials EIS. Therefore, DOE decided to prepare the F-Canyon Plutonium Solutions EIS on an expedited basis. On August 23, 1994, DOE published in the **Federal Register** a notice amending the NOI for the Interim Management of Nuclear Materials at the SRS. The notice explained DOE's decision to prepare the F-Canyon Plutonium Solutions EIS.

The NOI for the Interim Management of Nuclear Materials EIS requested public comments and suggestions for DOE to consider in its determination of the scope of that EIS, and announced a public scoping period that ended on May 31, 1994. DOE held scoping meetings in Savannah, Georgia, North Augusta and Columbia, South Carolina, on May 12, 17, and 19, 1994, respectively. As a result of this public scoping process, DOE received comments applicable to the stabilization of F-Canyon plutonium solutions from individuals, organizations, and government agencies, and has considered these comments in the preparation of the F-Canyon Plutonium Solutions EIS.

On September 9, 1994, the U.S. Environmental Protection Agency published a Notice of Availability (NOA) in the **Federal Register** (59 FR 174, pages 46643–46644), which started the public comment period on the Draft F-Canyon Plutonium Solutions EIS; DOE published a corresponding NOA for the Draft EIS on September 9, 1994 (59 FR 174, pages 46627–46628). The public comment period ended on October 24, 1994.

DOE revised the Draft EIS in response to written and oral comments received during the public comment period from individuals, organizations, and Federal and state agencies. Public hearings were held in Columbia and North Augusta, South Carolina, and Savannah, Georgia (October 4, 6, and 11, 1994, respectively). On December 30, 1994, EPA published a Notice of Availability of the Final F-Canyon Plutonium Solutions EIS in the **Federal Register** (59 FR 250, page 67706), following distribution of approximately 400 copies to government officials and interested groups and individuals.

The Department of Energy received letters from the following organizations following the distribution of the Final EIS: (1) the South Carolina Department of Transportation; (2) the Centers for Disease Control, U.S. Department of Health and Human Services; (3) the National Oceanic and Atmospheric Administration, U.S. Department of Commerce; and, (4) the U.S. Environmental Protection Agency (EPA), Region IV. The EPA Region IV letter indicates that a comment on the Draft EIS concerning impacts to ecological systems is only partially addressed in the Final EIS. The Final EIS briefly considered the potential for impacts to ecological systems and concluded that none of the alternatives discussed in the EIS would affect threatened or endangered species or any of the flora or fauna routinely found in the vicinity of F-Canyon areas. Therefore, DOE did not include a detailed analysis of the impacts on ecological systems in the Final EIS. DOE will be discussing with EPA how to better represent/analyze potential impacts of emissions on ecosystems. The EPA Region IV letter states that the preferred alternative will have the least overall impact and that EPA supports DOE's action. The National Oceanic and Atmospheric Administration concluded that no federally-listed threatened or endangered species under its jurisdiction would be affected by the proposed action. The other organizations had no comments on the Final EIS, and indicated they supported DOE's action plans or provided neither an indication of support nor opposition of DOE's action plans.

II. Alternatives

The proposed action addressed in the Final F-Canyon Plutonium Solutions EIS is to stabilize the plutonium solutions in order to eliminate the risks inherent in storing this plutonium in liquid form. DOE examined four alternatives for stabilizing the solutions, and a no-action alternative, in the Final EIS.

A. No Action

DOE would continue to manage the existing 303,000 liter (80,000 gallon) inventory of solutions in stainless steel tanks in the F-Canyon. The solutions would be monitored and corrective actions taken, as necessary, to minimize the potential for precipitation of the plutonium and the possibility of an inadvertent criticality. This action would continue for the 10-year time period evaluated in the Final EIS.

B. Process to Plutonium Metal (the Preferred Alternative)

Under this alternative, DOE would use the existing F-Canyon and FB-Line processes and equipment to convert the plutonium solutions to metal. The metal would be a chemically stable form of plutonium that DOE could produce without modifying the existing equipment. Because there is no need for additional plutonium for weapons, DOE would not attempt to meet previous isotopic or chemical purity

specifications that were applicable for weapons production. In addition, DOE has made a commitment that plutonium-239 from stabilization actions would not be used for nuclear explosive purposes. The plutonium metal would be packaged and stored, similar to other plutonium metal already in vault storage. DOE expects this stabilization alternative could be accomplished in 20 months from the date of a Record of Decision, which would be significantly faster than stabilization could be accomplished under the other alternatives. In conjunction with stabilizing the solutions to metal, DOE would undertake a project to modify a portion of the FB-Line facility to provide the capability to repackage the plutonium metal into a configuration that meets the recently issued DOE standard for long-term storage of plutonium (U.S. Department of Energy Criteria for Storage of Plutonium Metals and Oxides, DOE–STD–3013–94, Washington, D.C.). The new storage standard requires plutonium to be packaged in a form that is stable over an extended period (e.g., 20 years) without human intervention. Plutonium metal would be packaged in sealed metal cans without the presence of plastics. Current SRS plutonium metal packaging requires the use of plastic around an inner can for contamination control purposes. DOE estimates that it could accomplish the modifications to the FB-Line packaging capability by late 1997 at a cost of approximately $3 million. Alternatively, while the solutions are stabilized to metal, DOE could modify a different vault facility to provide the necessary equipment to repackage the metal to meet long-term storage requirements. DOE estimates this could cost between $70 million and $150 million and that it could complete repackaging by the end of 2001.

The stabilization to metal alternative would produce a solid form of plutonium that would be safer and easier to store in the shortest period of time. As a result, this is DOE's preferred alternative.

C. Processing to Plutonium Oxide

DOE would modify the FB-Line to support conversion of the plutonium solutions to a plutonium oxide and to package the material for storage. The objective would be to produce a material form and packaging configuration that met the new DOE standard for long-term storage of plutonium. If the extent of the FB-Line modifications necessary to convert the plutonium solutions to a plutonium oxide and to package the material to meet the long-term storage standard were economically or physically impractical, DOE would perform the stabilization in two phases. DOE would modify FB-Line to be able to convert the material initially to an oxide form and package it in FB-Line. At the same time, DOE would design and construct a new facility to process, package, and store the oxide in accordance with the new standard. DOE estimates that the minimally required modifications to FB-Line to provide the solution-to-oxide conversion capability would cost $7 million and take three years to complete. Following completion and modification, DOE would operate the FB-line for approximately 9 months to convert and package the oxide for storage. Repackaging the oxide to meet the new plutonium storage standard would not occur for another three years when the new facility for packaging were available. This new facility is estimated to cost between $70 million and $150 million; repackaging of the oxide could also be completed by the end of 2001.

D. Vitrification in the Defense Waste Processing Facility

DOE would transfer the plutonium solutions to the SRS waste tank farm. Before transfer, the solutions would be adjusted to ensure the safety of the material in the tanks. DOE has identified several concepts for adjusting the solutions: diluting the solutions with water and chemicals to achieve very low plutonium concentration, diluting the solutions with depleted uranium, or adding iron and manganese or other neutron poisons such as gadolinium. In the waste tanks, high-activity waste would settle to the bottom of the tank in the form of sludge. DOE would transfer highly radioactive sludge to the Defense Waste Processing Facility, where it would be vitrified (converted to a glass-like substance) and stored on the Site until DOE made and implemented final disposition decisions.

DOE estimates it would take approximately six years to perform the technical studies, training, and qualification efforts necessary to ensure safe operations for transferring the solutions for subsequent vitrification under this alternative. The solutions would not be transferred to the high-level waste tanks until all studies for vitrification were final. After these studies were completed, DOE estimates that it would take an additional three years to complete the process of transferring all the plutonium solutions to the high-level waste tanks because of the limited availability of tank space and criticality concerns. The plutonium solutions would remain in the high-level waste tanks until DOE transferred the contents to the Defense Waste Processing Facility for vitrification.

E. Vitrification in F-Canyon

Under this alternative, DOE would vitrify the plutonium into a borosilicate glass matrix using an F-Canyon vitrification facility. Modifications to the F-Canyon would be necessary, and include the installation of a geometrically favorable evaporator to concentrate plutonium solution, and equipment to convert the concentrated plutonium solution to a glass matrix using technology similar to that to be used on a larger scale in the Defense Waste Processing Facility. The capital costs of these modifications would be about $27 million; the facility could be available by January 1999.

When the modifications to the F-Canyon to install the vitrification facility were completed, the plutonium solutions would be transferred to the facility and evaporated. This concentrated plutonium solution would be fed, along with finely ground glass (frit), to a melter to produce a borosilicate glass containing the plutonium. The molten glass would be poured into stainless steel packages and stored in an existing vault at the SRS until final disposition decisions were made and implemented.

Although the vitrification of this plutonium could begin as early as January 1999, DOE analyzed the Vitrification in F-Canyon Alternative as though it began during the first six months of 2000. The Final EIS describes its environmental consequences, which are largely independent of the schedule for vitrification.

F. Other Activities for Reduction of Risk

In addition to the alternatives analyzed in detail in the Final F-Canyon Plutonium Solutions EIS to stabilize the plutonium solutions, DOE identified other activities that have the potential to reduce the risk associated with storing the plutonium solutions in liquid form. These activities are: (1) transporting the solutions to H-Canyon for stabilization, (2) purification of the solutions by processing those that have the greatest criticality risk through the second plutonium cycle in F-Canyon, (3) risk reduction activities identified in the DOE Office of Environment, Safety and Health Assessment of Interim Storage of Plutonium Solutions in F-Canyon and Mark-31 Targets in L-Basin at the Savannah River Site (DOE–EH–0397P/SRS–FCAN–94–01), and (4) shipment of the solutions off the Site for

stabilization. Activities that involve transportation of the plutonium solutions would involve all the risks associated with the alternatives for stabilization plus the risks and costs associated with transportation of radioactive liquids. Activities such as purification of the plutonium solutions by operating the second plutonium cycle in F-Canyon would reduce but not eliminate the risks associated with storing liquid plutonium solutions. In addition, operation of only the second plutonium cycle to purify plutonium solutions would require process development work and establishment of operating parameters, because the F-Canyon process has never been operated in this manner. One important issue associated with this approach would be unprecedented high levels of radiation in the second cycle portion of the facility due to the greatly increased presence of fission products.

III. Environmental Impacts of Alternatives

The Final F-Canyon Plutonium Solutions EIS evaluated the environmental impacts of the alternatives, including the no action alternative. DOE analyzed the potential impacts that would result from implementation of the alternatives and believes there would be minimal impacts in the areas of geologic resources, ecological and cultural resources, socioeconomics, aesthetics and scenic resources, and noise. This is because implementation of each of the alternatives would occur within the F-Area and mostly within the F-Canyon building. In light of planned SRS workforce reductions, any jobs associated with implementation of any of the alternatives could be filled through reassignment of current workers, resulting in no discernible impact on the regional economy.

Radiological health effects on workers from normal operations would be small for any alternative, much less than one additional cancer death (0.2 latent cancer fatalities for the no action alternative and less for the other alternatives) during the lifetimes of the affected individuals. The effect on the general public could be at most 0.0006 additional cancer deaths (for the processing to oxide and vitrification in F-Canyon alternatives, and less for the other alternatives) in the general population within 80 kilometers (50 miles) of the SRS. This is to say that no latent cancer fatalities in either workers or the general population are expected to occur as a result of routine operations. DOE expects similarly small adverse nonradiological health effects to workers and the public from emissions of toxic pollutants. Because discharges and emissions would vary little among the alternatives, public health effects would vary little among the alternatives. The analysis in the EIS shows that these potential small impacts would not disproportionately affect minority or low income populations.

Implementation of any of the alternatives, including the No Action alternative, would result in a risk of accidents. The Final EIS evaluates a spectrum of potential accidents for each alternative. To enable a relative comparison of potential impacts among the alternatives, the accident with the highest reasonably foreseeable consequence for each alternative was assumed to occur and the maximum potential effects (latent cancer fatalities) were calculated. The projected frequency for these high-consequence accidents ranged from once in 17,000 years for a plutonium solutions fire involving solvents to once in 5,000 years for a severe earthquake. The maximum potential effect accident, although with a low probability, during the storage of plutonium solutions (for the periods prior to stabilization and for the No Action alternative) and during F-Canyon operation for stabilization is about 6 latent cancer fatalities to the exposed offsite population. For the stabilization actions involving FB-Line operations (processing to metal or processing to oxide), the maximum potential effect from an accident is less than 2 latent cancer fatalities in the exposed offsite population. Following stabilization and during stabilized plutonium storage, the maximum potential effect from an accident is less than 1 latent cancer fatality in the exposed offsite population.

The SRS generates several different types of waste, including low-level waste, high-level waste, transuranic waste and mixed waste. The Final EIS lists estimates of waste generation for each alternative. DOE estimates that the smallest increase for all waste types would occur if the processing to plutonium metal alternative were implemented. Implementation of this alternative would eventually result in high-level waste equivalent to 40 Defense Waste Processing Facility (DWPF) high-level waste canisters. The largest increase in high-level waste would occur if the vitrification in DWPF alternative were implemented. The largest increase in saltstone and low-level waste generation would result from implementing the processing to oxide alternative. None of the alternatives is expected to generate substantial quantities of mixed waste. With the exception of vitrification in DWPF, the impact on SRS waste management capacities from implementing any of the alternatives would be minimal because the Site can accommodate all the waste generated with existing and planned radioactive waste storage and disposal facilities.

It would not be appropriate under any of the alternatives that would result in stabilized plutonium to characterize the stabilized plutonium as waste. The alternatives for the disposition of surplus weapons-usable plutonium are currently being examined in a programmatic environmental impact statement that is scheduled for completion early next year. The nitric acid that is associated with the plutonium solutions likewise should not be characterized as waste. The nitric acid historically was introduced into the separations process to dissolve irradiated materials and provide for criticality/radiological safety by maintaining the plutonium in solution pending stabilization. The nitric acid continues to serve this vital safety function. The South Carolina Department of Health and Environmental Control (SCDHEC) agrees with DOE that the F-Canyon plutonium solutions should not be regulated as a mixed waste (Letter, R. Lewis Shaw, SCDHEC to Frank R. McCoy, III, DOE, January 26, 1995).

IV. Other Factors

In addition to examining the environmental impacts of the alternatives, DOE also considered other factors related to the stabilization of the F-Canyon plutonium solutions. These factors are: (1) new facilities that would be required, (2) security and nuclear nonproliferation, (3) implementation schedule, (4) technology availability and technical feasibility, (5) labor availability and core competency, (6) degree of reliance on aging facilities, and (7) post-stabilization custodial care required. The processing to plutonium metal alternative would be the most advantageous for all factors except: (2) security and nuclear nonproliferation and (6) reliance on aging facilities.

The processing to oxide and vitrification alternatives would involve minimal reliance on aging facilities because they would use new facilities for the final step involved in stabilizing the plutonium and for storing the plutonium after completion of stabilization. The processing to metal alternative would use existing facilities to stabilize the plutonium solutions.

The vitrification alternatives would be preferable from the security and nuclear nonproliferation standpoint because

vitrification would produce a form of material least likely to be used in manufacturing a nuclear weapon. However, a proliferator could recover the plutonium from the vitrified (glass) matrix if the necessary resources and proper technology were available. The processing to metal alternative would result in a form of plutonium that closely resembles materials used in weapons production. DOE does not believe that processing these solutions to metal and storing the metal in vaults in protected areas of the SRS, adding appreciably less than one percent to the U.S. inventory of many metric tons, would constitute a proliferation risk. DOE has committed to not using plutonium-239 and weapons-usable highly enriched uranium separated or stabilized during the phaseout, shutdown, and cleanout of weapons complex facilities for nuclear explosive purposes. This prohibition would apply to the plutonium metal produced as a result of the decision to process the F-Canyon plutonium solutions to metal. DOE believes that the processing to metal alternative is fully consistent with the Presidential Nonproliferation and Export Control Policy, under which the United States ''* * * will seek to eliminate where possible the accumulation of stockpiles of highly-enriched uranium or plutonium, and to ensure that where these materials already exist they are subject to the highest standards of safety, security, and international accountability.'' Furthermore, in accordance with the provision in this Policy to submit U.S. fissile material surplus to national security requirements to inspection by the International Atomic Energy Agency (IAEA), the Department intends to offer this material along with other material at the SRS for IAEA inspection when the material is in a form and consolidated in a storage facility suitable for safe and effective monitoring by the IAEA.

V. Environmentally Preferable Alternative

As shown in the Final F-Canyon Plutonium Solutions EIS, the potential environmental impacts of implementing any of the alternatives are generally small and within the same range. DOE believes that any of the action alternatives would be preferable to the no action alternative because the inherent risk of storing plutonium in liquid form would be eliminated. DOE considers the processing to metal alternative the environmentally preferable alternative because it would eliminate the inherent risk of maintaining plutonium in solution in the shortest period of time. While the plutonium remains in solution, there is a risk of releases and subsequent radiation exposure to workers, the public, and the environment from accidental criticality incidents, leaks, and disruptions to engineered systems from earthquakes.

VI. Decision

DOE has decided to implement the preferred alternative, processing the F-Canyon plutonium solutions to metal, as discussed in the Final F-Canyon Plutonium Solutions EIS. Concurrent with the processing, packaging and storage of the metal, which is expected to take about 20 months, DOE will undertake activities to modify part of the FB-Line facility to provide the capability to repackage the plutonium metal into a configuration that meets the DOE standard for long-term storage of plutonium. The plutonium metal resulting from this action will not be used for nuclear explosive purposes.

VII. Mitigation

The F-Canyon and FB-Line facilities that will be used to process the plutonium solutions to metal incorporate engineered features to limit the potential impacts of facility operations to workers, the public and the environment. All of the engineered systems and administrative controls are subject to the startup requirements of DOE Order 5480.31, which will assure, prior to startup, the safe operation of the facilities. No other mitigation measures have been identified; therefore, DOE need not prepare a Mitigation Action Plan.

VIII. Conclusion

DOE has determined that the F-Canyon and FB-Line facilities should be operated to process to metal approximately 303,000 liters (80,000) gallons of plutonium solutions currently stored in F-Canyon. In reaching this decision, DOE considered the analysis of the potential environmental impacts of alternatives for stabilizing this material in the Final F-Canyon Plutonium Solutions EIS. This action will produce a solid form of plutonium that will be safer and easier to store than a liquid solution. It will take less time than other alternatives and will therefore eliminate more quickly the risk inherent in storing plutonium in liquid form. The plutonium metal resulting from this action will be stored at the Savannah River Site pending decisions on its disposition and will not be used for nuclear explosive purposes.

Issued at Washington, DC, February 1, 1995.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 95–4308 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Federal Assistance Award to WalMart Stores, Incorporated

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application; DE–FG36–95G010057.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to grant funding to WalMart Stores, Incorporated to implement photovoltaics in the City of Industry Environmental Demonstration Store's vestibule to power battery-operated shopping carts, store equipment and an electric demonstration vehicle.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John P. Motz, Contract Specialist. The telephone number is 303–275–4737. The Contracting Officer for this action is John W. Meeker.

SUPPLEMENTARY INFORMATION: DOE has evaluated, in accordance with the DOE Federal Assistance Regulations, 10 CFR section 600.14, the unsolicited proposal entitled ''Building Integrated Photovoltaic System'' and recommends that the unsolicited proposal be accepted for support without further competition in accordance with section 600.14 of the Federal Assistance Regulations.

The proposed WalMart Store for City of Industry, California, has been selected by WalMart as one of the ''Environmental Demonstration Stores''. WalMart's Environmental Demonstration Store program was established to investigate the feasibility of various environmentally sensitive options for building design and development. The City of Industry store has been designated to test energy efficiency concepts such as the proposed implementation of photovoltaics.

The proposed photovoltaic system will be used as roofing of the entrance vestibule canopy. The energy produced

by the system is intended to power battery-operated handicap shopping carts, store equipment, and an electric demonstration vehicle. Energy in excess of those needs would be converted to AC and directed into the electric utility grid. The schematic design includes kiosks on both sides of the entry vestibule. One kiosk would house the recharging station for the DC-powered equipment and the other would contain an educational display.

The objectives of this project are to educate the public on global energy sustainability, promote alternative energy sources, and assist in making innovative technology feasible and accessible to mainstream America. Furthermore, the effort may serve as an effective example of corporate response to the Clinton Administration's goal of public-private cooperation to reduce greenhouse gases.

The total program cost is estimated to be $234,400, with the DOE share being $100,000 or 43%. This notice is published for public comment at least fourteen calendar days prior to making an award.

Issued in Golden, Colorado, on February 10, 1995.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 95–4310 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on External Regulation of Department of Energy Nuclear Safety

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the first meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

DATE AND TIMES: Thursday, March 9, 1995, 8:30 a.m. to 5:00 p.m.; and Friday, March 10, 1995, 8:30 a.m. to 3:30 p.m.

ADDRESSES: United States Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202) 254–3826.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The purpose of the Committee is to provide the Secretary of Energy, the White House Counsel on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to nuclear safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 24 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, state, Tribal, and industry interests and experience.

Purpose of the Meeting: This is the first meeting of the Committee. The Committee will receive information from DOE officials and begin to organize its future work.

Tentative Agenda:

The meeting will address administrative and organizational issues for the Committee. The Committee will receive presentations on the mission and operations of the Department, the legal framework for current regulation of DOE activities, and DOE practices for oversight of environment, safety and health. The agenda for both days will provide opportunities for public comment. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public are welcome to make oral statements. Those who wish to do so should contact Tom Isaacs at the address or telephone number listed above. Individuals may also register on March 9 and 10, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak. Written comments will be received up to five days after the meeting, and should be mailed to Catherine Volk, 1726 M St. NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on February 16, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4311 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting: State Energy Advisory Board.

Date and Time: March 22–23, 1995 from 9:00 am to 5:00 pm.

Place: The Madison Hotel, 15th and M Streets, Washington, DC, 20005.

Contact: William J. Raup, Office of Technical and Financial Assistance (EE–50), Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The report ''Alternative Futures for the Department of Energy National Laboratories,'' prepared by the Secretary of Energy Advisory Board (Galvin Task Force).
- The FY 1996 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Review and approval of current Board Annual Report.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying

within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 16, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–4309 Filed 2–21–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 1862–014–WA]

City of Tacoma; Notice of Intent To Hold a Public Meeting in Eatonville, Washington To Discuss the Draft Environmental Impact Statement (DEIS) for the Existing Nisqually Hydroelectric Project

February 15, 1995.

In December 1994, the Commission staff mailed the DEIS for the licensing of the existing hydroelectric project, which consists of two adjacent hydroelectric generating facilities in the Nisqually River Basin, to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental and economic consequences of relicensing the applicant's (City of Tacoma (Tacoma)) existing 45 MW Alder facility and existing 69 MW LaGrande facility with enhancements as proposed by Tacoma, and alternatives to the applicant's proposal.

The alternatives to the applicant's proposal include: no action (continued operation without any enhancement); and Tacoma's proposal with alternative operation and enhancements of recreation, fishery, and wildlife resources and other measures requested by conservation intervenors, agencies, and staff.

The public meeting, which will be recorded by an official stenographer, is scheduled for 7:00 p.m. on Wednesday, March 1, 1995 at the Eatonville High School Theater, 302 Mashell Avenue North, Eatonville, Washington.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record. In addition, written comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 until March 14, 1995. All written comments should clearly show the following caption on the first page: Nisqually (P–1862) DEIS.

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4235 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1359–001, et al.]

Consolidated Edison Company of New York, Inc., et al. Electric Rate and Corporate Regulation Filings

February 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1359–001]

Take notice that on January 31, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Compliance Report in the above-referenced docket.

Con Edison states that a copy of this filing has been served by mail upon the New York State Electric and Gas Corporation and the Public Service Commission of the State of New York.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Carolina Power & Light Company

[Docket No. ER95–27–000]

Take notice that on January 27, 1995, Carolina Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER95–59–002]

Take notice that on January 30, 1995, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Intercompany Interchange Contract of Southern Companies, various unit power sales agreements, and various interchange agreements with certain neighboring utilities. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–59–000.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Mississippi Power Company

[Docket No. ER95–138–002]

Take notice that on February 1, 1995, Mississippi Power Company tendered for filing a modification to its practice under its interchange agreement with South Mississippi Electric Power Association. The purpose of this modification is to allow for the in kind payment of allowances prior to the EPA reporting date rather than at the time of the transaction.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Alabama Power Company

[Docket No. ER95–149–002]

Take notice that on January 30, 1995, Alabama Power Company tendered for filing amended procedures applicable to its recovery of emission allowance replacement costs under the Interconnection Agreement Between Alabama Power Company and Alabama Electric Cooperative, Inc., and the Agreement for Transmission Service to Distribution Cooperative Members of Alabama Electric Cooperative. The purpose of the filing is to comply with the Commission's Order of December 30, 1994 in Docket No. ER95–149–000.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER95–285–000]

Take notice that on January 31, 1995, Illinois Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Company

[Docket No. ER95–335–000]

Take notice that on February 8, 1995, Tampa Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation

[Docket No. ER95–510–000]

Take notice that on February 1, 1995, Allegheny Power Service Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. NorAm Energy Services, Inc.

[Docket No. ER95–512–000]

Take notice that on January 30, 1995, NorAm Energy Services, Inc. (NorAm) tendered for filing copies of a Power Sales Agreement between Central Louisiana Electric Company, Inc. and NorAm.

10. New England Power Company

[Docket No. ER95–539–000]

Take notice that on February 2, 1995, New England Power Company tendered for filing a contract with Catex-Vitol Electric, Inc. for the provision of exchange unit capacity.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER95–540–000]

Take notice that on February 2, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a revision to the Annual Charge Rate Calculation, Supplement No. 2 to PacifiCorp Rate Schedule FERC No. 234, for transmission service pursuant to the Operations and Maintenance Agreement for Swift No. 2 between PacifiCorp and the Public Utility District No. 1 of Cowlitz County (Cowlitz), PacifiCorp Rate Schedule FERC No. 234.

PacifiCorp requests that the revised Annual Charge Rate Calculation be accepted within sixty days of the Commission's receipt of this filing.

Copies of this filing were supplied to Cowlitz, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa-Illinois Gas & Electric Company

[Docket No. ER95–541–000]

Take notice that on February 2, 1995, Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an initial rate schedule consisting of a Transmission Service Agreement dated as of December 16, 1994 between Iowa-Illinois and Electric Clearinghouse, Inc. (ECI).

Iowa-Illinois states that the terms and conditions of this Agreement are identical in all respects to Iowa-Illinois' Transmission Service Agreement with Enron Power Marketing, Inc. which was accepted for filing by the Commission on January 31, 1995 in Docket No. ER95–334–000 and Iowa-Illinois' Transmission Service Agreement with four other power marketers submitted for filing on January 13, 1995 in Docket No. ER95–426–000. Iowa-Illinois further states that under the Agreement it will provide non-firm transmission service to ECI on a monthly, weekly, daily or hourly basis to transmit power and associated energy from certain defined points to other defined points on Iowa-Illinois' interconnected electric system. Service will be provided upon request by ECI on an as available basis as determined by Iowa-Illinois.

Iowa-Illinois requests a waiver of the Commission's 60-day notice requirement in order to permit the Agreement to become effective on or before March 6, 1995.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission and ECI.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER95–542–000]

Take notice that on February 2, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide non-firm transmission service to Catex Vitol Electric Inc. (Catex) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this filing has been mailed to Catex.

NUSCO requests that the Service Agreement become effective sixty (60) days after receipt of this filing by the Commission.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER95–543–000]

Take notice that on February 2, 1995, Potomac Electric Power Company submitted an explanation of Pepco's treatment of the cost of emission allowances in its as-available power sales tariff, and makes minor corrections to the original submittal. This filing has no substantive effect upon the services rendered and makes no change in rates. Pursuant to the Commission's ''Policy Statement and Interim Rule'' on emission allowance costs and with waiver of notice, an effective date of January 1, 1995 is requested.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER95–547–000]

Take notice that on February 3, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, new and amended Exhibits to the Cooperative Communications Agreement, Contract No. DE–MS79–92BP93740, between PacifiCorp and Bonneville Power Administration.

PacifiCorp request that these Exhibits be accepted pursuant to 18 CFR 35.3 of the Commission's Rules and Regulations.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER95–548–000]

Take notice that on February 3, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Southern Companies'') filed a Service Agreement dated as of January 23, 1995 between Florida Power Corporation and SCS (as agent for Southern Companies) for service under the Short Term Non-Firm Transmission Service Tariff of Southern Companies.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. FA91–53–002]

Take notice that on January 24, 1995, New England Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: March 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Power Company

[Docket No. FA92–60–001]

Take notice that on January 27, 1995, Ohio Power Company tendered for filing its compliance report in the above-referenced docket.

Comment date: March 1, 1995, 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. 95–4232 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF88–20–002]

Washington Power Co., L.P.; Notice of Amendment to Filing

February 15, 1995.

On February 14, 1995, Washington Power Company, L.P. tendered for filing an amendment to its January 13, 1995, filing in this docket.

The amendment pertains to technical requirements of the cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by March 7, 1995, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4234 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11501–000, et al.]

Hydroelectric Applications Putnam Hydropower Inc., et al.; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11501–000.

c. *Date Filed:* September 26, 1994.

d. *Applicant:* Putnam Hydropower Inc.

e. *Name of Project:* Cargill Falls.

f. *Location:* On the Quinebaug River in the Town of Putnam, Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles Rosenfield, 87 Senexet Road, Woodstock, CT 06281, (203) 928–7100.

i. *FERC Contact:* Charles T. Raabe (dt), (202) 219–2811.

j. *Comment Date:* April 10, 1995.

k. *Description of Project:* The proposed project would consist of: (1) The existing 200-foot-long concrete dam; (2) a reservoir with a 15-acre surface area and a 60-acre-foot storage capacity at normal surface elevation 254 feet MSL; (3) an intake having 4 wooden gates; (4) a forebay having trashracks; (5) a 300-foot-long covered canal leading to a forebay and a 100-foot-long, 7.5-foot-diameter steel penstock; (6) an existing powerhouse containing a new 650-kW generating unit operated at a 28-foot head and at a flow of 375 CFS; (7) an 800-foot-long stone canal tailrace; (8) a 100-foot-long 480-volt transmission line and a 480-volt/23-kV transformer; and (9) appurtenant facilities.

The applicant estimates that the cost of the studies under the terms of the permit would be $10,000 and the average annual generation would be 3,000,000 kWh. Project power would be sold to Connecticut Light & Power Co. The owners of the facilities are the Town of Putnam and the Polyner Corp.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

2 a. *Type of Application:* Minor license.

b. *Project No.:* 11516–000.

c. *Date filed:* January 25, 1995.

d. *Applicant:* Commonwealth Power Company.

e. *Name of Project:* Irving Dam.

f. *Location:* On the Thornapple River near Irving in Barry County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Jan Marie Evans, 4572 Sequoia, Okemos, MI 48864, (517) 351–5400.

i. *FERC Contact:* Julie Bernt (202) 219–2814.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Description of Project:* The proposed project consists of: (1) An existing 6-foot-high gravity-earth filled dam; (2) an existing reservoir with a surface area of 25 acres at a maximum pool elevation of 738.5 feet USGS and a storage capacity of 100 acre-feet; (3) a 1,200-foot-long head race canal; (4) a powerhouse containing one generating unit with a rated capacity of 600 Kw; and, (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,800,000 Kwh. The project site is owned by Commonwealth Power Company.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3 a. *Type of Application:* Preliminary permit.

b. *Project No.:* 11502–000.

c. *Date Filed:* October 3, 1994.

d. *Applicant:* Town of Ely.

e. *Name of Project:* Red Rock.

f. *Location:* On the Des Moines River in Marion County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Thomas J. Wilkinson, Jr., 101 Second Street, S.E., American Building, Suite 300, Cedar Rapids, IA 52401, (319) 366–4990.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* April 22, 1995.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red Rock Dam and would consist of: (1) A new intake structure; (2) two 21-foot-diameter steel penstocks; (3) a powerhouse containing two generating units with a total installed capacity of

30 MW; (4) a tailrace, (5) a 6-mile-long transmission line; and (6) appurtenant facilities.

Applicant estimates that the average annual energy production would be 110,000 Mwh and that the cost of the studies to be performed under the terms of the permit would be $200,000. Project energy would be sold to municipalities in the state of Iowa and other users.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

4 a. *Type of Application:* Exemption 5 MW or less (Tender Notice).

b. *Project No.:* 11316–002.

c. *Date filed:* January 31, 1995.

d. *Applicant:* Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. *Name of Project:* Tazimina.

f. *Location:* On the Tazimina River, near Iliamna, Newhalen, and Nondalton, Section 24, Range 32 West, Township 3 South, Seward Meridian, in Southcentral Alaska.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Brent Petrie, General Manager, INNEC, P.O. Box 210, Iliamna, Alaska 99606, (907) 571–1259.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. The proposed project would consist of: (1) A 100-foot-long concrete channel control sill; (2) an intake structure about 50 feet downstream and on the opposite side of the concrete sill; (3) a 5-foot-diameter, 430-foot-long welded steel penstock; (4) a powerhouse with two 350-kW units; (5) a 6.7-mile-long transmission line; and (6) other appurtenances.

k. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

5 a. *Type of Application:* Major New License (Notice of Tendering).

b. *Project No.:* 1927–008.

c. *Date filed:* January 30, 1995.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* North Umpqua.

f. *Location:* On the North Umpqua River in Douglas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:*

Stanley A. Desousa, Director, Hydro Resources, PacifiCorp, 920 S.W. Sixth Avenue, Portland, OR 97204, (503) 464–5343

Thomas H. Nelson, Stoel Rives Boley Jones & Grey, 900 S.W. Fifth Avenue, Portland, OR 97204, (503) 294–9281.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843.

j. Brief Description of Project: The project consists of: the 29–MW Lemolo No. 1 Development, the 33–MW Lemolo No. 2 Development, the 15–MW Clearwater No. 1 Development, the 26–MW Clearwater No. 2 Development, the 42.5–MW Tokete Development, the 11–MW Fish Creek Development, the 18–MW Slide Creek Development, and the 11–MW Soda Spring Development for a total rated capacity of 185,500 MW. The applicant proposes some modifications to project components including uprating the Fish Creek Development to 14.5 MW.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with section 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in

all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 15, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4286 Filed 2–21–95; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5154–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1633.06; Revision of Part 72 of the Acid Rain Program under Title IV of the Clean Air Act Amendments of 1990 (Substitution Plans); was approved 01/09/95; OMB No. 2060–0258; expires 01/31/96.

EPA ICR No. 1717.01; NESHAP for Off-Site Waste Operations—63-DD; was approved 12/30/94; OMB No. 2060–0313; expires 12/31/97.

EPA ICR No. 1136.04; NSPS for Petroleum Refinery Wastewater Systems–Reporting and Recordkeeping–Subpart QQQ; was approved 01/17/95; OMB No. 2060–0172; expires 12/31/97.

EPA ICR No. 1723.01; Reporting and Recordkeeping Requirements for the Importation of Nonconforming Marine Engines; was approved 01/09/95; OMB No. 2060–0320; expires 01/31/98.

EPA ICR No. 1727.01; Evaluation of Mandated Drinking Water Filtration and its Effects on Community Health; was approved 01/09/95; OMB No. 2080–0050; expires 01/31/98.

EPA ICR No. 1071.05; NSPS for Stationary Gas Turbines (Subpart GG)–Information Requirements; was approved 01/09/95; OMB No. 2060–0028; expires 01/31/98.

EPA ICR No. 1731.01; National Survey of Radiological Laboratory Capability; was approved 01/23/95; OMB No. 2080–0051; expires 12/31/97.

OMB Disapprovals

EPA ICR No. 1724.01; Marine Engine Selective Enforcement Auditing, Reporting, and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 1725.01; Marine Engine Manufacturers Assembly-Line Testing; Reporting, and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 0282.07; Motor Vehicle Emissions Defect Information Report and Records; was disapproved 01/09/95.

EPA ICR No. 1722.01; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines, Control of Air Pollution; was disapproved 01/09/95.

EPA ICR No. 0095.07; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; was disapproved 01/09/95.

EPA ICR No. 1726.01; Manufacturer-Based in-Use Emission Testing Program; was disapproved 01/09/95.

OMB Extensions of Expiration Dates

EPA ICR No. 1381.03; Recordkeeping/Reporting Requirements for Compliance with the 40 CFR part 258 Solid Waste Disposal Facility Criteria; OMB No. 2050–0122; expiration date extended to 06/30/95.

EPA ICR No. 1488.02; Superfund Site Evaluation and Hazard Ranking System; OMB No. 2050–0095; expiration date extended to 07/31/95.

Dated: February 15, 1995.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 95–4297 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

[ECAO–RTP–0237; FRL–5157–7]

Draft Health Assessment Document for Diesel Emissions

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces the extension of the public comment period for the Health Assessment for Diesel Emissions. This draft document was prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD).

DATES: In the December 23, 1994 **Federal Register** (59 FR 66305), EPA announced that the public review and comment period for the external review draft of this document would be from December 27, 1994, through February 28, 1995. EPA is now extending the comment period through May 1, 1995. Comments must be in writing and must be postmarked by May 1, 1995.

ADDRESSES: To obtain a copy of the external review draft of the Health Assessment Document for Diesel Emissions (Volumes I and II), interested parties should contact the ORD Publications Center, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562 or fax (513) 569–7566. Please provide your name, mailing address, and the EPA document numbers (EPA/600/8–90/057Ba and Bb).

The draft document also is available for inspection at the EPA Headquarters Library, Waterside Mall, 401 M Street, S.W., Washington, DC, between 10:00 a.m. and 2:00 p.m., Monday through Friday, except holidays.

Comments on the draft document should be sent to the Project Manager for Diesel Emissions, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Ewald, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–4164.

SUPPLEMENTARY INFORMATION: The draft Health Assessment Document for Diesel Emissions summarizes scientific issues and identifies research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health risks attendant to the use of diesel fuels. In its initial form, the draft health assessment was first reviewed at an expert peer-review workshop in July 1990 (55 FR 28453), which was open to the public. The present draft incorporates revisions made in response to scientific input from the workshop and subsequent comments on targeted issues. After the public comment period and review by EPA's Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), the current draft document will undergo further revision, and a final document will be issued. This document will support EPA's decision-making processes that pertain to the health effects of diesel emissions.

Dated: February 9, 1995.

Joseph K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 95–4292 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5157–9]

Public Water System Supervision Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Primary Program. The State of New York has adopted drinking water regulations that satisfy the National Primacy Drinking Water Regulations for the Lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that New York's Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. EPA's determination to approve the State of New York's revision to its Public Water Supervision Program for compliance with EPA's Lead and Copper Rule is conditional upon New York's State making certain minor changes, no later than January 1, 1996, to the State Sanitary Code and Environmental Health Manual. The changes required, which New York State has agreed to make, include the following:

1. The State must either delete the word ''economics'' in Sections 5–1.46 and 5–1.47 of the State Sanitary Code or clarify, in the Code, that economics will only be considered in selecting corrosion control treatment when two methods are equally effective.

2. The State must change Section 5–1.43 of the code to read as follows:

(e) *Distribution* Monitoring. All large water systems shall monitor for water quality parameters *in Section 5–1.45 (c)* in each *initial* six month monitoring period they monitor for the first draw lead and copper tap samples. All small and medium water systems shall monitor for water quality parameters *in Section 5–1.45 (c)* during the six month monitoring period which the water system exceeds the copper or lead action level. *After a water system installs optimal corrosion control treatment the water system shall monitor for water quality parameters for two consecutive six month monitoring periods. After the State specifies water quality parameters samples for optimal corrosion control treatment, all water systems shall monitor for water quality parameters at the frequencies stated in 5–1.43 (a) for two consecutive six month monitoring periods.*

A new paragraph Subpart 5–1.43 (d) must be added as follows:

(d) *After State specification of minimum values or ranges for water quality parameters for optimal corrosion control treatment, water systems shall maintain water quality parameter values at or above specified minimum values or within ranges specified by the State. If the water quality parameters value of any sample is below the minimum value or outside the range specified by the State, the water system is out of compliance with the State Sanitary Code.*

The italic words are revisions to the Code.

3. The State must change their definition of ''action level'' in Section 5–1.41(a) of the State Sanitary Code to be consistent with the language of the Federal definition of ''action level'' in 40 CFR 141.2.

4. Section (G)(1) of PWS Item No. 51 of the New York State *Environmental Health Manual,* dated March 31, 1993, which contains procedures for making corrosion control treatment determinations must be changed to ensure the State establishes a range of values for pH at entry points to the distribution system and *''at taps throughout the distribution system''.*

5. Section (E)(5) of PWS Item No. 52 of the *Environmental Health Manual,* which contains procedures for making lead service line replacement decisions, must be amended by striking the phrase ''less than 16 ug/L'' and replacing it with the requirement in 40 CFR 141.84(c), which reads, ''less than or equal to 0.015 mg/L.''

6. Section 5–1.40 (a)(1) of the State Sanitary Code must be changed by replacing the phrase ''3,300 people or less'' with the phrase ''50,000 people or less''.

7. The State must adopt as part of the State Sanitary Code the analytical methods contained in 40 CFR 141.89 of the federal rule.

8. The State must amend the first paragraph in Section 5–1.47 of the State Sanitary Code to include the phrase ''within 6 months of exceeding the lead or copper action level''.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a

responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:30 pm, Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection, 2 University Plaza/ Western Avenue, Albany, New York 12203–3399, (518) 458–6731

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: January 30, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–4300 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5158–2]

Public Water System Supervision Program Revision for the Government of the Virgin Islands

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Government of the Virgin Islands is revising its approved Public Water System Supervision Primacy Program. The Government of the Virgin Islands has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations for the Lead and Copper Rule (LCR). USEPA regulations were promulgated on June 7, 1991 (56 FR 26460). The USEPA has determined that the Virgin Islands' Lead and Copper regulations are no less stringent than the corresponding Federal regulations and that the Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Carl-Axel P. Soderberg—Director, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Planning and Natural Resources, Public Water Supply Supervision Program, Government of the Virgin Islands, Nisky Center, Suite 231, Nisky 45A, St. Thomas, Virgin Islands 00802

U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Victor Trinidad, Chief, Water Management Staff, U.S. Environmental Protection Agency, Caribbean Field Office, Centro Europa Building, 1492 Ponce De Leon Avenue, Suite 417, Santurce, Puerto Rico 00907, (809) 729–6951.

(Sec. 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: February 3, 1995.

William J. Muszynski,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 95–4298 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–M

[OPP–34069; FRL 4931–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on May 23, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following

Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before May 23, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000869–00180	Green Light 10% Sevin Dust	Carbaryl	Poultry houses
019713–00046	Simazine 80W	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00060	Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00252	Simazine 90DF	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00271	Simazine 80W Herbicide	Simazine	Asparagus, artichokes, sugarcane, non-cropland
019713–00273	Simazine 4L	Simazine	Asparagus, artichokes, sugarcane, non-cropland

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000869	Green Light Company, P.O. Box 17985, San Antonio, TX 78217.
019713	Drexel Chemical Company, P.O. Box 9306, 2487 Pennsylvania St., Memphis, TN 38190.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: February 10, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 95–4314 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30380; FRL–4934–6]

LipaTech, Inc.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 24, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30380] and the registration/file number, attention Product Manager (PM) 14, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Product Manager 14, Robert Forrest, Rm. 219, CM #2, (703–305–6600).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included In Any Previously Registered Products

1. File Symbol: 7173–ENU. Applicant: LipaTech, Incorporation, 3101 West Custer Ave., Milwaukee, WI 5320. Product name: Difethialone Technical. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4) 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 97.6 percent. Proposed classification/Use: None. For formulating other registered products. (PM 14)

2. File Symbol: 7173–ENL. Applicant: LipaTech, Inc. Product name: Difethialone Pellets. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4) 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 0.0025 percent. Proposed classification/Use: None. For indoor and outdoor (around buildings in urban areas) rodent control of house mice,

Norway rats, and warfarin resistant Norway rats. (PM 14)

3. File Symbol: 7173–ENA. Applicant: LipaTech, Inc. Product name: Difethialone Pellets Place Packs. Rodenticide. Active ingredient: [(Bromo-4'-[biphenyl-1-1']-yl-4) 3-tetrahydro-1,2,3,4-naphthyl-1] 3-hydroxy-4, 2*H*-1 benzothiopyran-one-2 at 0.0025 percent. Proposed classification/Use: None. For indoor and outdoor (around buildings in urban areas) rodent control of house mice, Norway rats, and warfarin resistant Norway rats. (PM 14)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 7, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–4051 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

[PP 3G4198/T669; FRL 4935–9]

Monsanto Co.; Initial Filings and Amendment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established and has amended temporary tolerances for residues of the hybridizing agent Genesis® (Mon 21250) [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire March 4, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 241, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)–305–6800.

SUPPLEMENTARY INFORMATION: EPA gives notice that it has established and amended temporary tolerances relating to the initial filing and amendment of tolerances for residues of the hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on certain raw agricultural commodities as follows:

Initial Filing

1. *PP 3G4198.* Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., NW., Washington, DC 20005, has requested in pesticide petition (PP) 3G4198, the establishment of temporary rotational crop tolerances for residues of the wheat hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodities sorghum grain at 5 parts per million (ppm), sorghum fodder at 2 ppm, and sorghum forage at 2 ppm.

Amendment

2. *PP 3G4198.* EPA gives notice that the Agency has received an amendment for pesticide petition (PP) 3G4198, which previously published in the **Federal Register** of April 15, 1994 (59 FR 18118), stating that temporary tolerances had been established for residues of the hybridizing agent Genesis® (Mon 21250) and its metabolites [2-(4-chlorophenyl)-3- ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodities wheat grain at 250 parts per million (ppm), wheat straw at 50 ppm, and wheat forage at 15 ppm.

Monsanto Company, The Agricultural Group, Suite 1100, 700 14th St., N.W., Washington, DC 20005, has requested an amendment to (PP) 3G4198 to establish a temporary tolerance for residues the hybridizing agent Genesis® (Mon 21250), [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4 pyridazinecarboxylic acid, potassium salt] in or on the raw agricultural commodity wheat forage from 15 parts per million (ppm) to 10 ppm. These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524-EUP-80, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Co. must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 4, 1997. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on these pesticides indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 14, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–4313 Filed 2–21–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1044–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 10, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–4316 Filed 2–21–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011489

Title: Nacional/Ivaran Space Charter and Sailing Agreement

Parties:

Companhia Maritima Nacional

A/S Ivarans Rederi

Synopsis: The proposed Agreement authorizes the parties to charter space from each other and to rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports and points on the east coast of South America.

Dated: February 16, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4315 Filed 2–21–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Marmara, Inc., c/o Cichanowicz, Callan & Keane, 139 So. Street, Suite 103, New Providence, NJ 07974, Officers: Cahit Paksoy, President; Frank J. Fassbender, Vice President

American President Business Logistics Services, Ltd., 1111 Broadway, Oakland, CA 94607, Officers: Joji Hayashi, Director; Rodney W. Miller, Vice President

Alfons Frerika U.S.A., Inc., dba Alfons Freriks Freight Forwarding, 4674 Clark Howell Highway, #4, Atlanta, GA 30349, Officers: Rob Smits, President; Victor Boutier, Vice President

World Cargo Corporation, 4408 NW 74th Avenue, Miami, FL 33166, Officers: Diana Obregon-Bader, President; Liliana Hayes, Vice President.

Dated: February 15, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–4219 Filed 2–21–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Glenn Fred Bergau; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 7, 1995.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Glenn Fred Bergau, Usk, Washington; to acquire an additional 0.996 percent, for a total of 10.39 percent, of the voting shares of Pend Oreille Bancorp, Newport, Washington, and thereby indirectly acquire Pend Oreille Bank, Newport, Washington.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4223 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

First Community Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 1995.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Community Bancshares, Inc., Houston, Texas; to engage *de novo* in providing economic information and advice, statistical forecasting services, and industry studies, conducting financial feasibility studies, providing advice regarding swaps, caps, and similar transactions related to interest rates or prices and economic indices, pursuant to § 225.25(b)(4) of the Board's Regulation Y. The geographic scope will be limited to employees, shareholders, directors, and their family members, affiliated companies and trusts.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4224 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

First Mariner Bancorp, 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 March 17, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Mariner Bancorp (formerly MarylandsBank Corp.), Towson, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of First Mariner Bank (formerly MarylandsBank, FSB), Towson, Maryland.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 100 percent of the voting shares of Grand Haven Bank, Grand Haven, Michigan, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Place Financial Corporation, Farmington, New Mexico; to acquire 100 percent of the voting shares of Western Bank, Gallup, New Mexico.

Board of Governors of the Federal Reserve System, February 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4225 Filed 2–21–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

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: 100394 AND 101494

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
General Electric Company, Thomas R. Roos, Island Development Corporation Inc	94–2247	10/03/94
Sterling Software, Inc., KnowledgeWare, Inc., KnowledgeWare, Inc	94–2143	10/04/94
ONEOK Inc., Nelson Bunker Hunt Trust Estate, Creston Partners, L.P	94–2195	10/04/94
Emerson Electric Co., Astec (BSR) PLC, Astec (BSR) PLC	94–2140	10/05/94
TransCanada PipeLines Limited, Northridge Canada Inc., Northridge U.S. Inc	94–2160	10/05/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100394 AND 101494—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Corning Incorporated, J. Richard Fennell, Bioran Medical Laboratory	94–2174	10/05/94
Harvest States Cooperatives, H.J. Heinz Company, Portion Pac, Inc	94–2204	10/05/94
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises-Texas, Inc./Beverly California Corp	94–2209	10/05/94
Klaus J. Jacobs, Brock Candy Company, Brock Candy Company	94–2220	10/05/94
Amoco Corporation, John M. Fox, MarkWest Energy Partners, Ltd	94–2226	10/05/94
Beverly Enterprises, Inc., Eckerd Corporation, Insta-Care Holdings, Inc	94–2229	10/05/94
Arrow Electronics, Inc, Anthem Electronics, Inc., Anthem Electronics, Inc	94–2235	10/05/94
Philip F. Anschutz, Trammell Crow Equity Partners, The Tabor Group Ltd./Tabor Acquisition #1, Inc	94–2244	10/05/94
Dawson Holdings, PLC, The Faxon Company, Inc., The Faxon Company, Inc	94–2246	10/07/94
Mobil Corporation, Mr. Irwin B. Singer, The Atlas Oil Company	94–2159	10/12/94
The Clayton & Dubilier Private Equity Fund IV L.P., The Travelers Inc., American Capital Management & Research, Inc	94–2182	10/12/94
Liberty Brokerage Investment Corp., Liberty Brokerage Investment Corp., Patriot Securities, L.P	94–2196	10/12/94
ANTEC Corporation, Keptel, Inc., Keptel, Inc	94–2214	10/12/94
Airgas, Inc., Post Welding Supply Company, Post Welding Supply Company	94–2239	10/12/94
Jerry Zucker, W.R. Grace & Co., W.R. Grace & Co.-Conn.	94–2240	10/12/94
David J. McGrath, Jr., c/o TAD Resources Int'l., Inc., Thomas L. Kirk, Kirk-Mayer, Inc. (KMI)	94–2248	10/12/94
Charles Schusterman, Oryx Energy Company, Sun Operating Limited Partnership	94–2249	10/12/94
David H. Jacobs Trust (The), Jacobs Properties, Inc., Jacobs Properties, Inc	94–2253	10/12/94
Jacobs Realty Limited Partnership, Jacobs Properties, Inc., Jacobs Properties, Inc	94–2254	10/12/94
Jacobs Realty Limited Partnership, Richard E. Jacobs, Mall A Limited Partnership	94–2255	10/12/94
CGW Southeast Partners I, L.P., The BOC Group plc, Ohmeda, Inc	94–2258	10/12/94
Lincolnshire Equity Fund, L.P., TRW Inc., TRW Inc	94–2259	10/12/94
Clear Channel Communications, Inc., Mario F. Iacobelli, Heritage Broadcasting Company of New York	94–2267	10/12/94
Creative Technology Ltd., Digicom Sytems, Inc., Digicom Systems, Inc	94–2270	10/12/94
The NWNL Companies, Inc., USLICO Corporation, USLICO Corporation	94–2281	10/12/94
AmeriQuest Technologies, Inc., Jonathan O. Lee, Ross White Enterprises, Inc	94–2282	10/12/94
Ford Motor Company, Amoco Corporation, Amoco Oil Company	94–2284	10/12/94
Citicorp, Ground Round Restaurants, Inc., Ground Round Restaurants, Inc	94–2285	10/12/94
Foundation Health Corporation, Thomas-Davis Medical Centers, P.C., Thomas-Davis Medical Centers, P.C	94–2184	10/13/94
K–III Communications Corporation, Irvin J. Borowsky, North American Publishing Company	94–2286	10/13/94
The Methodist Hospital, St. Luke's Episcopal Hospital, St. Luke's Episcopal Hospital	94–2289	10/13/94
St. Luke's Episcopal Hospital, The Methodist Hospital, The Methodist Hospital	94–2290	10/13/94
IBP, Inc., Lakeside Farm Industries Ltd., Lakeside Farm Industries Ltd	94–2210	10/14/94
Loral Corporation, K & F Industries, Inc., K & F Industries, Inc	94–2236	10/14/94
General Electric Company, NEWCO, NEWCO	94–2269	10/14/94
American Premier Underwriters, Inc., Principal Mutual Life Insurance Company, Principal Casualty Insurance Company	94–2273	10/14/94
Japan Nuclear Fuel Company, Ltd., NEWCO, NEWCO	94–2279	10/14/94
Central Life Assurance Company, American Mutual Life Insurance Company, American Mutual Life Insurance Company	94–2288	10/14/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4278 Filed 2–21–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3149]

Equifax Credit Information Services, Inc.; 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 require, among other things, a Georgia-based corporation to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports as required by the Fair Credit Reporting Act and to also maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed under Section 604 of the Fair Credit Reporting Act.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Christopher W. Keller or Donald d'Entremont, FTC/S–4429, Washington, D.C. 20580. (202) 326–3159 or 326–2736.

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 Equifax Credit Information Services, Inc., a corporation, hereinafter sometimes referred to as Equifax, and it now appearing that Equifax is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Equifax Credit Information Services, Inc., by its duly authorized officers, and its attorney, and counsel for the Federal Trade Commission that:

1. Equifax Credit Information Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1600 Peachtree Street, N.W., Atlanta, Georgia 30309.

2. Equifax is a consumer reporting agency as defined in Section 603(f) of the Fair Credit Reporting Act.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Equifax, and the proceeding is in the public interest.

4. Equifax admits all the jurisdictional facts set forth in the draft complaint.

5. Equifax 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 into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 50 *et seq.*

6. This agreement and the order contemplated hereby is for settlement purposes only and neither its execution by the parties hereto, acceptance by the Commission nor entry of the agreed-to order shall constitute any admission by Equifax that any law has been violated. Equifax specifically denies that it has violated the Fair Credit Reporting Act in any respect whatsoever.

7. This agreement shall not become 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 complaint contemplated thereby, 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 Equifax, 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.

8. 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 Equifax, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with 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 complaint and decision containing the agreed-to order to Equifax's address as stated in this agreement shall constitute service. Equifax waives any right it may 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 the agreement may be used to vary or contradict the terms of the order.

9. Equifax has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Equifax 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

For the purpose of this order, the following definitions apply:

''Commission'' means the Federal Trade Commission.

''Equifax'' means Equifax Credit Information Services, Inc., its successors and assigns, and its officers, agents, and employees acting in such capacity on its behalf, directly or through any corporation, subsidiary, division or other device.

''FCRA'' means the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et. seq.*, as the same from time to time may be amended or modified by statute or by regulations having the effect of statutory provisions.

The terms ''Person,'' ''Consumer,'' ''Consumer Report,'' ''Consumer Reporting Agency,'' ''File,'' and ''Employment Purposes'' are defined as set forth in Sections 603 (b), (c), (d), (f), (g), and (h), respectively, of the FCRA, 15 U.S.C. §§ 1681a(b), 1681a(c), 1681a(d), 1681a(f), 1681a(g), and 1681a(h).

''Permissible Purpose'' means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. § 1681b, for which a Consumer Reporting Agency may lawfully furnish a Consumer Report.

''Subscriber'' means any Person who, pursuant to an agreement with Equifax, furnishes Credit Information to Equifax or who requests or obtains a Consumer Report from Equifax, excluding Consumers, public record sources, and independent contractors who provide public record information.

''Prescreening'' means the process whereby Equifax, utilizing Credit Information, compiles or edits for a Subscriber a list of Consumers who meet specific criteria and provides this list to the Subscriber or a third party (such as a mailing service) on behalf of the Subscriber for use in soliciting those Consumers for an offer of credit.

''Credit Information'' means information described by Section 603(d) of the FCRA, which Equifax maintains with respect to any Consumer, that Equifax obtains from Subscribers, public records or any other sources and from which Equifax creates Consumer Reports.

''Mixed File'' means a Consumer Report in which some or all of the information pertains to Consumers other than the Consumer who is the subject of that Consumer Report.

''Consumer DTEC Report'' means a type of Consumer Report, by whatever name, containing only Consumer identifying information such as name, telephone number, mother's maiden name, address, zip code, year of birth, age, any generational designation, Social Security number or substantially similar identifiers, or any combination thereof, together with information showing employment or employment status.

''Mixed-use Subscriber of Consumer DTEC Reports'' means the following Subscribers who obtain Consumer DTEC Reports: attorneys, law firms, detective agencies, private investigators, and protective services firms.

''Joint User'' means a user of a Consumer Report jointly involved with a Subscriber in a decision for which there is a Permissible Purpose to obtain the Consumer Report and for which the Consumer Report was initially obtained.

''Approval Date'' means the date on which the Associate Director for Enforcement of the Bureau of Consumer Protection of the Commission notifies respondent that the methodologies required by Paragraph II.1. of this Order have received final approval.

I

It is ordered that Equifax, in connection with the collection, preparation, assembly, maintenance and furnishing of Consumer Reports and Files, forthwith cease and desist from failing to:

1. Maintain reasonable procedures designed to limit the furnishing of Consumer Reports to Subscribers that have Permissible Purposes to receive them under Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include but are not limited to:

a. Continuing to require in Equifax's contracts that those who obtain Consumer Reports from Equifax in the form of lists developed through Prescreening make a firm offer of credit to each Consumer on the lists and take reasonable steps to enforce those contracts; and

b. Reasonable procedures to avoid (i) including in a Consumer Report information identifiable as pertaining to a Consumer other than the Consumer for whom a Permissible Purpose exists as to such report; and (ii) displaying Files identifiable as pertaining to more than one Consumer in response to a Subscriber request on one Consumer.

2. Maintain reasonable procedures designed to limit the furnishing of Consumer DTEC Reports to Subscribers under the circumstances described by Section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include, with respect to prospective Subscribers of Consumer DTEC Reports, before furnishing any Consumer DTEC Report to such Subscribers, and with respect to current Consumer DTEC Subscribers, within six months after the effective date of this order:

a. Adoption of procedures requiring all Consumer DTEC Subscribers to provide written certification that Subscribers will not share or provide Consumer DTEC Reports to anyone else, other than the subject of the report or to a Joint User;

b. Continuation of procedures requiring all Consumer DTEC Subscribers to provide written identification of themselves; written certification of the Permissible Purpose(s) for which the Consumer DTEC Reports are sought; and written certification that the Consumer DTEC Reports will be used for no other purpose(s) than the purpose(s) certified;

c. With respect to each entity that becomes a Consumer DTEC Report Subscriber on or after the effective date of this order, visitation to its place of business to confirm the certifications made pursuant to Paragraphs I.2.a. and I.2.b. of this order;

d. Refusing to furnish Consumer DTEC Reports to Subscribers who fail or refuse to provide the certifications required in Paragraphs I.2.a. and I.2.b. of this order;

e. Requiring each Mixed-use Subscription of Consumer DTEC Reports to provide a separate certification as to the Permissible Purpose for each Consumer DTEC Report it requests before the Consumer DTEC Report is furnished to it; and

f. Terminating access to Consumer DTEC Reports by any Subscriber who Equifax knows or has reason to know has obtained, after the effective date of this order, a Consumer DTEC Report for any purpose other than a Permissible Purpose, unless that Subscriber obtained such Report through inadvertent error—*i.e.*, a mechanical, electronic, or clerical error that the Subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors.

3. Maintain reasonable procedures as required by Section 607(a) of the FCRA to avoid including in any Equifax Consumer Report, other than a Consumer Report described in Section 605(b) of the FCRA, any information, notice or other statement that indicates directly or indirectly the existence of items of adverse information, the reporting of which is prohibited by Section 605(a) of the FCRA.

4. Follow reasonable procedures to assure maximum possible accuracy of the information concerning the Consumer about whom the Consumer Report relates, as required by Section 607(b) of the FCRA. Such procedures shall include but are not limited to reasonable precedures:

a. To detect, before Credit Information is available for reporting by Equifax, logical errors in such Credit Information.

b. To prevent reporting to Subscribers that Credit Information pertains to a particular Consumer unless Equifax has identified such information by at least two of the following identifiers: (i) the Consumer's name, (ii) the Consumer's Social Security number, (iii) the Consumer's date of birth, (iv) the Consumer's account number with a Subscriber or a similar identifier unique to the Consumer; provided however that,

(A) for public record information only, if such public record information does not contain at least two of the above identifiers, Equifax may identify such public record information by the Consumer's full name (including middle initial and suffix, if available) together with the Consumer's full address (including apartment number, if any); and

(B) in the future Equifax may alternatively identify Credit Information (including public record information) by a discrete identifier that is (*i*) unique to the Consumer, (*ii*) not utilized by Equifax at the time of execution of this agreement, and (*iii*) not susceptible of data entry error.

c. To assure that information in a Consumer's File that has been determined by Equifax to be inaccurate is not subsequently included in a Consumer Report furnished on that Consumer;

d. To prevent furnishing any Consumer Report containing information that Equifax knows or has reason to believe is incorrect, including information that the Consumer or the source or repository of the information has stated is not accurate (including that it does not pertain to the Consumer) unless Equifax has reason to believe that the statement is frivolous or irrelevant or, upon investigation, not valid;

e. To avoid the occurrence of Mixed Files, including but not limited to mixing of Files as the result of entry of data by Subscribers when seeking Consumer Reports; and

f. To avoid reporting in a Consumer Report public record information that pertains to Consumers other than the Consumer who is the subject of the Consumer Report, or which does not accurately reflect information concerning such subject as it appears on public records, including but not limited to following reasonable procedures to sample, verify or otherwise corroborate public record information furnished by Equifax.

5. Maintain reasonable procedures so that information disputed by a Consumer that is deleted or corrected upon reinvestigation by Equifax, does not subsequently appear in uncorrected form in Consumer Reports pertaining to that Consumer; provided, however, that if after Equifax has deleted such information from the File, Equifax reverifies such information, Equifax may reinsert such information in the File and report such information in subsequent Consumer Reports concerning that Consumer if, and only if, Equifax advises the Consumer in

writing that the information has been reinserted.

6. Make disclosure of the nature and substance of all information (except medical information) in its Files on the Consumer at the time of the request for disclosure, as required by Sections 609 and 610 of the FCRA, to any Consumer who has requested disclosure, has provided proper identification as required under Section 610 of the FCRA, and has paid or accepted any charges that may be imposed under Section 612 of the FCRA.

7. Reinvestigate and record the current status of items of information the completeness or accuracy of which is disputed by a Consumer, when the Consumer directly conveys the dispute to Equifax, and Equifax does not have reason to believe the dispute is frivolous or irrelevant. Such investigation shall include but not limited to:

a. Completing any reinvestigation, *i.e.*, verifiying, deleting, or modifying all disputed items in the Consumer's File, with thirty (30) days of receipt of the Consumer's dispute; provided, however, that if Equifax in good faith cannot determine the nature of the Consumer's dispute, Equifax shall attempt to determine the nature of the dispute by contacting the Consumer by mail or telephone within five (5) business days of receiving the Consumer's dispute, and complete its reinvestigation within thirty (30) days of the Consumer's response if Equifax in good faith can then determine the nature of the Consumer's dispute;

b. Communicating to the source used to verify the disputed information, a summary of the nature and substance of the Consumer's dispute;

c. Accepting the Consumer's version of the disputed information and correcting or deleting the disputed information, when the Consumer submits to Equifax documentation obtained from the source of the information in dispute which confirms that the disputed information on the Consumer Report was inaccurate or incomplete, unless Equifax in good faith has reason to doubt the authenticity of the documentation, in which case Equifax need not accept the Consumer's version of the dispute if it reinvestigates the dispute by contacting the source of the information and verifies that the documentation is not authentic; and

d. Employing reasonable procedures designed specifically to resolve (i) Consumer disputes that Equifax has reason to believe arise from Mixed Files, and (ii) Consumer disputes that indicate the repeated inclusion in Consumer Reports of previously disputed inaccurate or incomplete items.

8. Reinvestigate Consumer disputes in accordance with Section 611 of the FCRA. In connection therewith, Equifax shall impose no requirements beyond those in Section 611 of the FCRA, including but not limited to requirements that the Consumer:

a. Pay a fee for updating and recording the current status of disputed information;

b. Provide copies of identifying documentation, including but not limited to driver's license, Social Security card, and utility bills; and

c. Provide a written authorization before reinvestigating information the Consumer has disputed.

9. Continue, upon completion of the reinvestigation of information disputed by a Consumer, to write the Consumer and provide the following:

a. The results of the reinvestigation conducted by Equifax; and

b. A statement advising the Consumer of the Consumer's right to request that Equifax furnish notification that information has been deleted, or furnish a copy or codification or summary of any Consumer statement of explanation of the dispute that has been filed by the Consumer, to any Person specifically designated by the Consumer who has within the preceding two years received a Consumer Report for Employment Purposes, or within the preceding six months received a Consumer Report for any other purpose, which contained the deleted or disputed information.

II

It is further ordered that Equifax shall, annually for the five (5) year period following the Approval Date, measure, monitor, and test the extent to which changes in its computer system, including its algorithms, reduce the incidence of Mixed Files.

1. In complying with this Section, Equifax shall submit, within one hundred eighty (180) days of the effective date of this Order, for approval to the Associate Director for Enforcement, Bureau of Consumer Protection, of the Federal Trade Commission (''ADE''):

a. A proposed methodology for establishing a baseline against which changes may be measured, monitored, and tested; and

b. A proposed methodology for accurately measuring, monitoring, testing, and reporting the effects of changes made against the baseline established under the preceding paragraph.

2. For five (5) years following the Approval Date, Equifax shall submit annually to the ADE, in writing, the results of its comparison using the methodologies approved by the ADE as specified in Paragraph II.1. above, and to the extent not otherwise provided, shall include with such reports the results of a statistically significant analysis to determine the incidence of Mixed Files.

III

It is further ordered that Equifax shall, annually for five (5) years following the effective date of this order, submit the following information to the ADE within sixty (60) days of the anniversary of the effective date of this order and with respect to the preceding twelve (12) month period:

1. The total number of File disclosures to Consumers by Equifax;

2. The number of occasions on which Consumers have informed Equifax that they dispute information in files maintained by Equifax;

3. The number of such disputes where the disputed information was verified as accurate;

4. The number of such disputes in which information disputed was deleted from, or modified in, the disputing Consumer's File, after reinvestigation response; and

5. The number of such disputes in which information disputed was deleted from the disputing Consumer's File because no response to Equifax's verification inquiry was received within thirty days.

IV

It is further ordered that, except for Section III above, Equifax shall, until the expiration of five (5) years following the effective date of this order, maintain and upon request make available to the ADE for inspection and copying, all documents demonstrating compliance with this order. Such documents shall include, but are not limited to, representative copies of each form of agreement or contract governing Subscriber access to or use of Credit Information, each periodic audit or similar report concerning the testing or monitoring of its systems for preparation, maintenance, and furnishing of Consumer Reports and files, instructions given to employees regarding compliance with the provisions of this order, and any notices provided to Subscribers in connection with the terms of this order.

V

It is further ordered that Equifax shall deliver a copy of this order to all of its present and future management officials having administrative or policy responsibilities with respect to the subject matter of this order.

VI

It is further ordered that Equifax shall notify the ADE at least thirty (30) days prior to any proposed change in Equifax that might affect compliance obligations arising out of this order such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries.

VII

It is further ordered that Equifax shall, within one hundred eighty (180) days of service of this order, deliver to the ADE a report, in writing, setting forth the manner and form in which it has complied with this order as of that date. The Commission shall keep such report and its contents, or any report, document, or other information provided under Sections II, III, or IV above, or any notification provided under Section VI above, strictly confidential, in accordance with the Commission's Rules of Practice.

VIII

It is further ordered that if the FCRA is amended (or other similar federal legislation enacted) or the Commission issues any interpretation of the FCRA, relating to any obligation imposed on Equifax herein, which creates any new requirement for compliance with the FCRA that directly conflicts with any obligation imposed on Equifax by this order, Equifax may conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to the requirements of such statutory provision or interpretation; provided, however, that Equifax shall notify the ADE promptly if it intends to change its conduct as provided for in this Section, and provided further that nothing in this provision shall limit the right of the FTC to challenge any determination of direct conflict of Equifax hereunder and to seek enforcement of Equifax's obligations under this order to the extent such determination is erroneous. For purposes of this order, and by way of example only, a ''direct conflict'' between this order and a new statutory amendment or interpretation shall include a requirement in any such amendment or interpretation that a Consumer Reporting Agency complete a task or obligation addressed in this order in a greater period of time than is specified in the order.

IX

This order does not address the issue of disclosure under Section 609 of Credit Information (whether or not separately maintained in any File), including but not limited to Credit Information utilized for fraud alert or similar application verification services, which categorizes the identifiers on the Consumer or categorizes any other data on the Consumer and is susceptible of being furnished to a Subscriber, and the order does not in any way limit the right of the Commission to take any appropriate action after entry of this order relating to this issue, nor does it limit in any way Equifax's defenses to any such action.

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 Equifax Credit Information Services, Inc., a corporation (''the respondent''). This agreement, among other requirements, requires the respondent to cease and desist from failing to follow reasonable procedures to assure maximum possible accuracy when preparing consumer reports and cease and desist from failing to maintain reasonable procedures to limit the furnishing of consumer reports to subscribers that have permissible purposes to receive them, such as purposes encompassing credit transactions involving the consumer, employment and the underwriting of insurance.

The proposed consent order has been placed on the public record for sixty (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.

According to the complaint, the respondent failed to take reasonable steps to reduce the incidence of inaccuracies and obsolete items of information in the consumer reports it furnished and failed to maintain and follow reasonable procedures to assure maximum possible accuracy of the information contained in its consumer reports.

The complaint also alleges that respondent failed to limit the furnishing of consumer reports to only those who possessed a permissible purpose to receive consumer reports. The complaint further alleges that the respondent failed adequately to give disclosures of the nature and substance of all information (except medical information) when consumers properly requested disclosure of the information in their own files. The complaint additionally alleges that the respondent failed to properly reinvestigate disputed items of information in consumer reports.

The complaint alleges that by its failures to comply with the Fair Credit Reporting Act and pursuant to Section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of Section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future. Specifically, Part I of the Order requires the respondent to maintain reasonable procedures to assure that information placed in a consumer's file belongs to the consumer in question and is also accurate, complete and up-to-date without obsolete information. Further, the Order requires respondent to reinvestigate disputed items of information in a consumer's file in a timely and reasonable manner, generally within 30 days.

The consent order also contains provisions requiring respondent to maintain reasonable procedures to limit the furnishing of consumer reports (and specifically consumer reports in the form of identification reports containing employment information) to only those with permissible purposes to receive consumer reports. Further, the consent order provides that respondent disclose the nature and substance of all information (except medical information) in its files on a consumer in response to a proper request for disclosure from the consumer who is the subject of the file.

Part II of the Order requires the respondent to submit to the Commission for approval a methodology by which changes to the respondent's computer system will be measured. The incidence of consumer reports containing information of other consumers, not the subject of the report, will be measured against a baseline established by the methodology to determine the efficacy of the computer changes. These measurements will be submitted for five (5) years to the Commission in the form of annual reports.

Part III of the Order requires the respondent to annually for five (5) years submit to the Commission information concerning the numbers of disclosures provided and disputes received by the respondent.

Part IV of the Order requires the respondent for a period of five years to

maintain and make available all documents demonstrating its compliance with the Order.

Part V of the Order requires the respondent to deliver a copy of the Order to all of its present and future management officials having administrative responsibilities with respect to the subject matter of the Order.

Part VI of the Order requires the respondent to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect its compliance with the Order.

Part VII of the Order requires the respondent to file a written report with the Commission within one hundred eighty (180) days after service of the Order detailing the manner and form in which it has complied with the Order.

Part VIII of the Order allows respondent to conform the manner in which it conducts its business to any FCRA amendment (or other similar federal legislation enacted) or official Commission interpretation which relates to any obligation imposed on the respondent by the Order and which directly conflicts with an obligation imposed by the Order.

Part IX of the Order specifically reserves for future consideration the issue of disclosure of fraud alert or similar verification services to consumers who properly request disclosure under the FCRA.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Seceretary.

[FR Doc. 95–4279 Filed 2–21–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0132]

Tele-Communication, Inc.; 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 permit, among other things, Tele-Communication, Inc. (TCI) to complete its acquisition of TeleCable, on the condition that it divest either its own Columbus cable TV assets, or those of TeleCable, within twelve months. If the divestitures were not completed on time, the consent agreement would permit the Commission to appoint a trustee to complete the transaction. In addition, TCI, for ten years, would be required to obtain Commission approval before acquiring any cable TV system in the Columbus, GA., area.

DATES: Comments must be received on or before April 24, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2105, Washington, DC 20580, (202) 326–2610.

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

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisition of the common stock of TeleCable Corporation by Tele-Communications, Inc. and the proposed merger of TeleCable Corporation into TCI Communications, Inc., an entity within Tele-Communications, Inc., and it now appearing that Tele-Communications, Inc., hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between proposed respondent, by its duly authorized officer and attorney, and counsel for the Commission that:

1. Proposed respondent Tele-Communications, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC Parkway, Englewood, Colorado 80111.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

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. any claim under the Equal Access to Justice Act.

4. This agreement shall not become 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 complaint contemplated thereby, 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 the 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 draft of complaint, or that the facts as alleged in the draft complaint, other than 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 the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to divest and 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 complaint and 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 may 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 the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that 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

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''TCI'' means (1) Tele-Communications, Inc. and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Tele-Communications, Inc. controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

B. ''Control'' means (i) the ability or right, contractual or otherwise, to direct the management decisions of an entity, or (ii) an ownership interest of 50% or greater unless a person or entity other than Respondent has the right to direct the management decisions of such entity.

C. ''Commission'' means the Federal Trade Commission.

D. ''Columbus Cable Television System Assets'' means either TCI's Cable Television System or TeleCable's Cable Television System now operating in Muscogee and Harris Counties, Georgia, including all properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held or used principally in the provision of Cable Television Service in Muscogee and Harris Counties, including the governmental permits, franchises, intangibles, equipment and real property.

E. ''Designated Columbus Cable Television System'' means the Cable Television System chosen by TCI pursuant to Paragraph III B. 2. or if TCI fails to designate a Cable Television System pursuant to, and within the time limits of, Paragraph III B. 2., the Columbus Cable Television System Assets.

F. ''Cable Television Service'' means the delivery of various video entertainment and informational programming via a cable television system.

G. ''Cable Television System'' means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming and which is provided to multiple subscribers within a community.

H. ''The Relevant Geographic Area'' means the counties of Muscogee and Harris in the State of Georgia.

I. ''Competitiveness, viability and marketability'' of the Columbus Cable Television System Assets means the Respondent shall continue the operation of TCI's and TeleCable's Cable Television Systems in the ordinary course of business without material change or alteration that would adversely affect the value or goodwill of such Cable Television Systems and the Columbus Cable Television System Assets.

II

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within twelve months of the date this order becomes final, one of the Cable Television Systems constituting the Columbus Cable Television System Assets. Respondent shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the competitiveness, viability and marketability of the Columbus Cable Television System Assets. Respondent shall undertake its best efforts to facilitate any governmental approvals required to effect divestiture of the Columbus Cable Television System Assets and their continued use in Cable Television Service in the Relevant Geographic Area. To ensure the availability of programming to the divested Columbus Cable Television System Assets, Respondent shall waive any exclusive rights to distribute programming by means of Cable Television Systems in the Relevant Geographic Area.

B. Respondent shall divest the Columbus Cable Television System Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Columbus Cable Television System Assets is to ensure the continued use of the Columbus Cable Television System Assets as an ongoing, viable deliverer of Cable Television Service in the Relevant Geographic Area, and to remedy the lessening of competition resulting from the proposed acquisition of TeleCable Corporation by TCI as alleged in the Commission's complaint.

C. Pending divestiture of the Columbus Cable Television System Assets, respondent shall take such actions as are necessary to maintain the competitiveness, viability and marketability of the Columbus Cable Television System Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Columbus Cable Television System Assets except for ordinary wear and tear.

III

It is further ordered that:

A. If TCI has not divested, absolutely and in good faith and with the Commission's prior approval, the Columbus Cable Television System Assets within twelve months of the date this order becomes final, the Commission may appoint a trustee to divest the Columbus Cable Television System Assets, provided, however, that if the Commission has not approved a proposed divestiture within 120 days of the date the application for such divestiture has been put on the public record, the running of the divestiture period shall be tolled until the Commission approves or disapproves the divestiture. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, TCI shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III A. of this order,

respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures in the cable television industry. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after appointment of the trustee, respondent shall (1) execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order; and (2) notify the trustee in writing whether TCI chooses to divest the TCI Columbus Cable Television System or the TeleCable Columbus Cable Television System; provided that if TCI fails to make this designation within the specified time period, the trustee is authorized to divest either the TCI or TeleCable Columbus Cable Television System.

3. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Designated Columbus Cable Television System Assets.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III B. 2. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Designated Columbus Cable Television System Assets or to any other relevant information as the trustee may reasonably request. Respondent shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Designated Columbus Cable Television System Assets.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Designated Columbus Cable Television System Assets.

12. The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that respondent shall comply with all terms of the Hold Separate Agreement, attached to this Order and made a part hereof as Appendix I. The Hold Separate Agreement shall continue in effect until such time as the Columbus Cable Television System Assets shall have been divested as required by this order.

V

It is further ordered that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engage in Cable Television Service within the Relevant Geographic Area; or

B. Acquire any assets used for or previously used for (and still suitable for use for) Cable Television Service within the Relevant Geographic Area.

Provided, however, that this Paragraph V shall not apply to the acquisition of products or services in the ordinary course of business; and provided further, that this Paragraph V shall not apply to the acquisition of any interest in a concern that is not at the time of the acquisition engaged in Cable Television Service within the Relevant Geographic Area due to the sale within the preceding two years of all assets used for Cable Television Service within

the Relevant Geographic Area to another party who intended to operate said assets for Cable Television Service within the Relevant Geographic Area.

VI

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondent has fully complied with the provisions of Paragraphs II and III of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that affect compliance obligations arising out of the order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint of interference from it, to interview officers, directors, or employees of respondent, who may have counsel present, relating to any matters contained in this order.

Agreement to Hold Separate

This Agreement To Hold Separate (''Agreement'') is by and between Tele-Communications, Inc. (''respondent'' or ''TCI''), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC Parkway, Englewood, Colorado 80111; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.*

Whereas, respondent entered into an agreement with TeleCable Corporation (''TeleCable''), a Virginia corporation, whereby respondent will acquire the stock of TeleCable and merge TeleCable into TCI Communications, Inc., an entity within TCI (hereinafter the ''Acquisition''); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (''Consent Agreement''), which would require the divestiture of either the TCI or TeleCable Cable Television System Assets in Columbus, Georgia, the Commission must place the Consent Agreement on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the TeleCable Columbus Cable Television System Assets during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the assets described in Paragraph II of the Consent Agreement and the Commission's right to have the TeleCable Columbus Cable Television System Assets continue as a viable independent entity; and

Whereas, the purpose of this Agreement and the Consent Agreement is to:

(i) preserve the TeleCable Columbus Cable Television System Assets as a viable independent cable television system pending possible divestiture, and

(ii) remedy any anticompetitive effects of the Acquisition; and

Whereas, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

Whereas, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Agreement to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture pursuant to the Consent Agreement and to seek civil penalties or a court-appointed trustee or other equitable relief, as follows:

1. Respondent agrees to execute and be bound by the attached Consent Agreement.

2. Respondent agrees that from the date this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.b, it will comply with the provisions of paragraph 3 of this Agreement:

a. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the day after the divestiture required by the Consent Agreement has been completed.

3. To ensure the independence and viability of the TeleCable Columbus

Cable Television System Assets and to assure that no competitive information is exchanged between the TeleCable Columbus Cable Television System and the TCI Columbus Cable Television System, TCI shall operate the TeleCable Columbus Cable Television System separate and apart on the following terms and conditions:

a. To the maximum extent possible, TCI will retain current TeleCable Columbus Cable Television System management and employees (''the management team'') to manage and maintain the TeleCable Columbus Cable Television System. The individuals on the management team shall manage the TeleCable Columbus Cable Television System independently of the management of TCI's other businesses, including the TCI Columbus Cable Television System. The individuals on the management team shall not be involved in any way in the operation or management of any other TCI Cable Television System. If any member of the management team is unable or unwilling to continue to serve in his or her current position (or becomes unable to do so during the term of this Agreement) that position will be filled by an individual not involved in any way in the operation or management of any other TCI Cable Television System.

b. The management team, in its capacity as such, shall report directly and exclusively to an individual to be designated by TCI who has no direct responsibilities for Cable Television System operations and who is competent to assure the continued viability and competitiveness of the TeleCable Columbus Cable Television System (''TCI Contact'').

c. TCI shall not exercise direction or control over, or influence directly or indirectly the management team or any of its activities relating to the operations of the TeleCable Columbus Cable Television System; provided, however, that TCI may exercise such direction and control over the management team and the TeleCable Columbus Cable Television System Assets as is necessary to ensure compliance with this Agreement and with the Consent Agreement and with all applicable laws.

d. TCI shall maintain the marketability, viability, and competitiveness of the TeleCable Columbus Cable Television System assets and shall not sell, transfer, encumber (other than in the ordinary course of business), or otherwise impair their marketability, viability or competitiveness.

e. Except for the TCI Contact and the management team, TCI shall not permit any other TCI employee, officer, or director to be involved in the management of the TeleCable Columbus Cable Television System; provided, however, that TCI employees involved in engineering, construction, customer service, data processing, training, human resources, finance, legal services, tax, accounting, insurance, internal audit, payroll, programming, purchasing, real estate, risk management, telephony, compliance with FCC regulations, contract administration, and similar services (''support service employees'') may provide such services to the TeleCable Columbus Cable Television System.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the acquisition, defending investigations or litigation, or negotiating agreements to divest, TCI, other than the TCI Contact, the management team and support service employees involved in the TeleCable Columbus Cable Television System business, shall not receive or have access to, or the use of any material confidential information about the TeleCable Columbus Cable Television System. (''Material Confidential information,'' as used herein, means competitively sensitive or proprietary information not otherwise known to TCI from sources other than the TCI Contact, the management team involved in the TeleCable Columbus Cable Television System, or the support service employees.)

g. The management team shall serve at the cost and expense of TCI. TCI shall indemnify the management team against any losses or claims of any kind that might arise out of his or her involvement under this Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the management team.

h. If any member of the management team ceases to act or fails to act diligently, a substitute member shall be appointed.

4. Should the Federal Trade Commission seek in any proceeding to compel respondent to divest any of the Columbus Cable Television System Assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Agreement or this Agreement, or in any way relating to the Acquisition, as defined in the draft complaint, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Radino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

5. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Agreement and shall not assert as a defense such contract requirements in any action brought by the Commission to enforce the terms of this Agreement or Consent Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of respondent and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to compliance with this Agreement;

b. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''Commission'') has accepted for public comment from Tele-Communications, Inc. (''TCI''), an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days from receipt of comments from 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 or make final the agreement's order.

The Commission's investigation of this matter concerns TCI's proposed acquisition of TeleCable Corporation (''TeleCable''). TeleCable is the 18th largest cable company in the United States, and operates 21 cable systems located in 15 states. The Commission's investigation of this matter focused on the Columbus, Georgia, metropolitan area. There are only three cable

television providers in Columbus. TCI and TeleCable are the two largest cable television providers in the Columbus area in terms of the number of subscribers and the number of homes passed.

the agreement containing consent order would, if finally issued by the Commission, settle charges alleged in the Commission's complaint that TCI's acquisition of TeleCable would substantially lessen competition in the distribution of multichannel video programming by cable television in the Columbus, Georgia, area, in violation of Section 7 of the Clayton Act. The nature of such competition to be preserved is actual competition to serve existing homes, hotels, and apartment complexes. The order will also preserve competition for providing cable service to new housing developments and other presently cabled portions of the Columbus area. The Commission's complaint further alleges that TCI's merger agreement with TeleCable violates Section 5 of the Federal Trade Commission Act.

The order accepted for public comment would require TCI to divest a cable television system in the Columbus, Georgia, area. If TCI fails to divest a system within one year, the order allows the Commission to appointment a trustee to sell a cable system. A hold separate agreement executed in conjunction with the consent agreement requires TCI, until completion of the divestiture (or as otherwise specified), to maintain TeleCable's Columbus cable system separate from TCI's other operations. For ten (10) years from the date the order becomes final, the order would also prohibit TCI, without obtaining prior Commission approval, from acquiring any cable television system in the Columbus, Georgia, area.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4280 Filed 2–21–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Acrylonitrile Study Advisory Panel, National Cancer Institute, National Institutes of Health, on Friday March 24, 1995. The meeting will be held in Conference Room H, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public from 10 am to 5 pm for discussion and review of study progress. Attendance by the public will be limited to space available.

Ms. Carole A. Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Aaron Blair, Executive Secretary, Division of Cancer Etiology, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 418, 6130 Executive Boulevard, Rockville, Maryland 20892 (301/496–9093) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. Aaron Blair, (301) 496–9093, in advance of the meeting.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4244 Filed 2–21–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Health

National Cancer Institute; Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Cancer Institute (NCI) advisory committee meetings.

These meetings will be open to the public as indicated below with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

Ms. Carole Frank, NCI Committee Management Officer, National Institutes of Health, Executive Plaza North, Room 630E, 6130 Executive Boulevard MSC 7405, Bethesda, Maryland 20892–7405, (301) 496–5708, will provide summaries of the meetings and rosters of committee members upon request. Substantive program information may be obtained from the contacts listed below.

Committee Name: Developmental Therapeutics Contracts Review Committee.

Contact Person: Dr. C. Michael Kerwin, Scientific Review Administrator, DEA, NCI, NIH, Executive Plaza North, Room 601A, 6130 Executive Boulevard, Rockville, MD 20852–7405, Telephone: (301) 496–7421

Date of Meeting: March 3, 1995

Place of Meeting: Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Rockville, MD 20852

Closed: 9 am to adjournment

Agenda: Review, discussion and evaluation of individual contract proposals.

Committee Name: Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Contact person: Dr. Ihor J. Masnyk, Executive Secretary, NCI, NIH, Building 31A, Room 3A11, 9000 Rockville Pike, Bethesda, MD 20892–2440, Telephone: (301) 496–3251

Date of Meeting: March 6, 1995

Place of Meeting: Building 31C—Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Rockville, MD 20892

Open: 8:30 am to adjournment

Agenda: Discussion and review of the division budget and review of concepts for grants and contracts.

These meetings will be closed, as indicated, in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4242 Filed 2–21–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications
Committee Name: Child Psychopathology and Treatment Review Committee
Date: March 1–3, 1995
Time: 9 a.m.
Place: Wyndham Brystol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037
Contact Person: Bernice R. Cherry, Grants Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367

Committee Name: Mental Health AIDS and Immunology Review Committee—1
Date: March 2–3, 1995
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814
Contact Person: Regina M. Thomas, Grants Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470

Committee Name: Epidemiology and Genetics Review Committee
Date: March 5–7, 1995
Time: 9 a.m.
Place: Embassy Suites at Chevy Chase, 4300 Military Road, NW., Washington, DC 20015
Contact Person: Bernice R. Cherry, Grants Technical Assistant, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367

Committee Name: Mental Health AIDS and Immunology Review Committee—2
Date: March 6–7, 1995
Time: 8:30 a.m.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814
Contact Person: Rehana A. Chowdhury, Grants Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientists Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.

Dated: February 15, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–4243 Filed 2–21–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1995 Notices of Funding Availability

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on February 10, 1995, Volume 60, No. 28, pages 7980–7984, of the funding opportunities for grants and cooperative agreements from the Center for Substance Abuse Prevention (CSAP) during FY 1995. On page 7983, under the Eligible Applicants section of 4.1.3 Community Prevention Coalitions Demonstration Grant Program, a statement was included that ''the applicant must be part of an existing community partnership and must be designated to act on behalf of the larger coalition of multiple partnerships proposed in the grant application.''

The requirement that the applicant must be part of an existing partnership has been deleted, and the revised Eligible Applicants section now states that ''the applicant must be designated to act on behalf of the larger evolving coalition of multiple partnerships proposed in the grant application.''

Public notice was also given in the **Federal Register** on: January 4, 1995, Volume 60, No. 2, pages 474–478; January 30, 1995, Volume 60, No. 19, pages 5688–5691; and February 10, 1995, Volume 60, No. 28, pages 7977–7984; of the availability of funds from the SAMHSA Centers—Center for Mental Health Services, Center for Substance Abuse Prevention, and Center for Substance Abuse Treatment—for grant and cooperative agreement activities during FY 1995.

These notices specified that competing grant and cooperative agreement applications should be submitted to the Division of Research Grants, NIH, Westwood Building-Room 240, 5333 Westbard Avenue, Bethesda, MD 20892.

The mailing address for the Division of Research Grants, NIH, is being changed. Effective April 21, 1995, all competing SAMHSA applications must be sent to: Division of Research Grants, National Institutes of Health, 6701 Rockledge Drive MSC–7710, Bethesda, MD 20892–7710.*

Dated: February 16, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4323 Filed 2–21–95; 8:45 am]

BILLING CODE 4162–20–P

Cooperative Agreement with the Pennsylvania Department of Health

AGENCY: Center For Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of a planned single source, cooperative agreement award to support further development and continuation of a model comprehensive substance abuse treatment demonstration program for the City of Philadelphia.

SUMMARY: The Center for Substance Abuse Treatment (CSAT), SAMHSA, is publishing this notice to provide information to the public regarding a planned single source competing continuation award to the Pennsylvania Department of Health for the further development and operation of a model substance abuse treatment demonstration program. The current ''Target Cities'' project period will be

*Applicants who wish to use express mail or courier service should change the zip code to 20817–7710.

extended for an additional two years. The first year of the new cycle funding, fourth year of operation, will be funded with approximately $2,500,000 in federal funds. This is not a request for applications. The cooperative agreement will be awarded to the Pennsylvania Department of Health only upon receipt of a satisfactory application which is recommended for approval by an initial review committee and the CSAT National Advisory Council.

AUTHORITY/JUSTIFICATION: The competing continuation award will be made under the authority of Section 510(b)(5) of the Public Health Service Act, as amended (42 U.S.C. 290bb–3).

An award is being made on a single source basis in response to the Senate Committee on Appropriations report 103–318, accompanying HR 4606, which has language that states: ''Sufficient funding has been provided for CSAT to conduct an application cycle in fiscal year 1995 to extend from 3 to 5 years funding for the target cities grantee that was funded out of the normal funding cycle in fiscal year 1991.'' The report further states: ''The Committee expects the Center will maintain an application criteria that is consistent with and that meets the review standards and other requirements subject to target city applicants in fiscal year 1993.''

BACKGROUND: In fiscal year (FY) 1990, the Office for Treatment Improvement (CSAT's predecessor agency) initiated the Target Cities Cooperative Agreement Demonstration Program to assist major metropolitan areas with linking, integrating, and enhancing the components of their addiction treatment and health and human service systems in order to overcome the problems described below. In 1990, eight target cities were funded for a three-year period. On June 1, 1992 a ninth target city was funded in Philadelphia, Pennsylvania. In 1993 a review cycle for target cities applications was conducted by CSAT. In addition to new applications, each of the original eight cities was given an opportunity to compete for a fourth and fifth year of continuation funding. Because the Philadelphia target city was in its second year of implementation, it was not eligible in 1993 to compete for a fourth and fifth year of funding. In order to address this lack of opportunity, and in response to the Senate Committee on Appropriations report 103–318, referenced above, a competing continuation application is being requested from the State of Pennsylvania for the Philadelphia target city based on the guidelines provided in the 1993 Program Announcement No. AS 93–07.

Many areas of the United States could benefit from additional financial aid designed to improve access to high quality, effective addiction treatment and recovery programs and related health and human services. Some cities are facing demand for these resources in crisis proportions.

Epidemiological data indicate that individuals who live near or below the poverty line in large metropolitan areas tend to exhibit a high prevalence of alcohol and drug use and a concomitantly high incidence of addiction-related medical, psychological and socio-economic problems. Escalating incidence rates for HIV/AIDS, tuberculosis and sexually transmitted diseases in the metropolitan areas are closely linked to alcohol and drug use, as are homelessness, unemployment, crime and violence.

In most metropolitan communities, multiple factors have combined over time to diversify and fragment the components of the health and human services system rather than to integrate and facilitate the provisions of services and case processing alternatives for those who suffer from alcohol and drug problems. In almost all cases, jurisdictions with high demand for addiction treatment and recovery services have lacked sufficient resources for the enhancement or expansion of diagnostic, coordinated case management and evaluation efforts necessary to improve the effectiveness of the services infrastructure. Of great concern from a public health perspective, is that many addiction treatment and recovery programs do not have the resources or appropriate linkages with health care facilities to ensure that individuals with addictive disorders and their sexual partners are screened and treated for HIV, tuberculosis, and other infectious diseases.

In the context of complex and fragmented metropolitan systems of health and human service delivery, it is not likely that the needs of alcohol and drug-involved individuals and their families who live near or below the poverty line will be addressed in a cost-effective manner, for one or more of the following reasons:

(1) The system is not capable of concisely and comprehensively assessing individual and family needs.

(2) The existing infrastructure is designed to provide interventions on a discrete basis rather than to address the bio-psycho-socio-economic needs of the individual and family as part of a coordinated continuum.

(3) Individuals with alcohol and drug problems and their collaterals are not capable of effectively negotiating the complexities of a system composed of discrete, uncoordinated programs and are often unable to locate the treatment program(s) that best suits their needs.

(4) Individuals may be turned away from programs that lack the capacity to provide needed assistance, and may be unaware that there are other treatment alternatives available within or adjacent to the community in which they live.

(5) Individuals may be admitted to programs that are not capable of addressing their unique needs or are not designed to provide services in a cost-effective manner.

(6) Services may be delivered in a manner that is inconsistent with the current racial, ethnic, cultural, socio-economic and practical realities of the individuals and families who request assistance.

Since June 1992, the Philadelphia Target City Project has addressed many of the problems discussed above by directly enhancing the public drug and alcohol service system through eight inter-related components. These components are a central intake unit, a management information system, an enhanced case management system, provider staff enhancements, training and staff development, project evaluation, and two special initiatives. The special initiatives include a Labor Initiative component that is implemented through the Department of Labor's Job Training Partnership Act, and a CSAT Criminal Justice Initiative. The Labor Initiative provides vocational assessment, training and employment opportunities to individuals that have successfully completed treatment. The Criminal Justice Initiative provided funds for the development and implementation of a criminal justice management information system (MIS). This MIS has coordinated services and provided for the tracking of individuals through the Philadelphia treatment and criminal justice systems. The criminal justice MIS has provided for an effective system of early release from criminal justice institutions to treatment providers. These components provide patients access to treatment, standardized assessment, and appropriate referrals to an enhanced, integrated, and comprehensive treatment, medical and social service system. During the period of project implementation 4,000 individuals have been assessed for treatment services and 2,300 admissions to treatment have been accomplished. This single source award is planned to continue the development and implementation of a project that has

successfully improved and enhanced substance abuse treatment services for individuals receiving care through the publicly funded treatment system in Philadelphia.

FOR FURTHER INFORMATION CONTRACT: Randolph Muck, Acting Chief, Systems Improvement Branch CSAT/SAMHSA, Rockwall II, Room 618, 5600 Fishers Lane, Rockville, MD. 20857. Telephone: (301) 443–8802.

Dated: February 16, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4322 Filed 2–21–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Finding of No Significant Impact for an Incidental Take Permit for the Proposed Canyon Ridge, Phase A, Section 3 Development, Austin, Travis County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared an Environmental Assessment/Habitat Conservation Plan for issuance of a section 10(a)(1)(B) permit amendment for the incidental take of the Federally endangered golden-cheeked warbler (*Dendroica chrysoparia*) during the construction and operation of a residential development in northwest Travis County, Texas.

Proposed Action

The proposed action is the issuance of a permit amendment under Section 10(a)(1)(B) of the Endangered Species Act to authorize the incidental take of the golden-cheeked warbler during construction and operation of the Canyon Ridge development on the 24-acre site.

The Applicant plans to construct single-family and multi-family residences in northwest Travis County, Texas. The proposed development will comply with all local, State, and Federal environmental regulations addressing environmental impacts associated with this type of development. Details of the mitigation are provided in the Canyon Ridge, Phase A, Section 3 Environmental Assessment/Habitat Conservation Plan. Guarantees for implementation are provided in the Implementing Agreement. These conservation plan actions ensure that the criteria established for issuance of an incidental take permit amendment will be fully satisfied.

Alternatives Considered

1. No action,
2. Proposed action,
3. Alternate site location,
4. Alternate site design,
5. Wait for issuance of a regional Section 10(a)(1)(B) permit.

Based upon information contained in the Environmental Assessment/Habitat Conservation Plan, the Service has determined that this action is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted.

It is my decision to issue the section 10(a)(1)(B) permit amendment for the construction and operation of the Canyon Ridge, Phase A, Section 3 development in northwest Travis County, Texas.

John G. Rogers,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 95–4299 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice of Publication of Final Sample Prospectus and Related Guidelines

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service published notice to rescind Chapter 6, 7, 8 and 11 of NPS–48 (''The Concessions Guidelines'') Thursday, March 17, 1994 requesting comments at that time on the replacement document ''Sample Prospectus and Related Guidelines.'' The document includes among other matters, a sample prospectus for solicitation of offers for National Park Service concessions contracts and permits, related evaluation guidelines and application information and criteria.

As an internal staff manual, notice of the Sample Prospectus and Related Guidelines is not required to be published in the **Federal Register** nor was public comment required yet to assure that the view of all interested parties were considered, the National Park Service sought public comment on its Sample Prospectus and Related Guidelines document and considered all comments received and amend the document if it is so warranted. The 60-day comment period has expired, and the public interest would not be served in further delay of the effective date of this document.

General Comments

Only two entities responded to the publication of the notice with comments.

One commenter suggested that we withdraw this proposal until the Senate and House Finalize new legislation on Concession Management in the Parks. The public would not be served to consider this alternative as there exists a large backlog of NPS concession contract renewals which are necessary to complete to allow the commencement of major renovation and construction programs in areas of the nation park system, including improvements necessary to protect the health and safety of park visitors and NPS and concessioner employees. In addition, many concessioners are now operating under the terms of expired contracts and are accordingly, in need of contract renewal actions as soon as possible to permit business planning, actions and investments which require the existence of a new contract for implementation. It is also noted that the Sample Prospectus and Related Guidelines document is intended to provide guidance to NPS personnel concerning possible means to implement new policies and procedures adopted in the new NPS concession contracting regulations and new standard language concession contract, both of which were adopted after extensive public comment periods and consideration by NPS of all comments received.

This commenter discussed some issues that relate to NPS concession contracting regulations which were amended by NPS in furtherance of the objective of the Secretary's concession reform initiative. These issues, Possessory Interest, Compensation, Government Improvement and Capital Improvement accounts * * *are not further discussed here as they were the subject of extensive public comment in the adoption of the amended regulations and standard contract language. The amended regulations were published in final in the **Federal Register** on September 3, 1992 (57 FR 40496) and the Final revision of the Standard Contract Language was published in the **Federal Register** on January 7, 1993 (58 FR 43140).

This commenter cautioned that in the preparation of the Prospectus there are two items listed for the Appendix which related to existing possessory interest and suggest that care be taken to be sure that the incumbent be aware of the value established by the present law. They propose that values supplied by

the incumbent concessioner would reflect a more accurate assessment of the compensation required, rather than the use of an outside consultant or NPS estimate of this value. NPS acknowledges that the incumbent is entitled to compensation as outlined in a previous contract but that the terms of that contract allow for negotiation between parties, and should they be unable to reach a compromise, an arbitration process for the final determination of that compensable value as purchased by a new offeror.

The commenter expresses concern on the arbitration process utilized to resolve these disputes and states that an incumbent concessioner should not be expected to relinquish his or her rights to legal adjudication of the issue through the courts should it become necessary. NPS does not recognize this as a valid issue in this process as the procedure to settle these issues will not vary from established practice with the enforcement of the final regulations or standard contract language utilized herein.

The commenter acknowledged that the Concessions Management section of the prospectus had some excellent statements but that the ''partnership'' between NPS and the concessioner needs to be emphasized. They later note that this is emphasized in the contract language. NPS in designing the package took careful steps to avoid repetition in placing information in the prospectus and the contract as they are part of a complete presentation. The proposed contract is included in the package to illustrate the importance of all contract requirements.

Recent changes in the Utilities program as it relates to capital investments were commended.

Concern was expressed regarding the requirement that all concessioners comply with federal, state and local laws. NPS has made this a requirement of all contracts since the labor legislation was enacted. They described the problems recently encountered with the Department of Labor in a case in Nevada involving operations that fall under the Fair Labor Standards Act and the Contract Wage and Hours Standards Act. The Department of Labor has been asked to address this problem but as of yet, they have not issued a decision. This is a non-issue as it relates to this process.

Financial programs and practices were discussed as they relate to the law governing the concessions management program. They state that the NPS statement regarding Fair Return for the Operator appears misunderstood and misapplied. On Page 13 of the prospectus, it states that ''it is the responsibility of the offeror to assure itself that the terms of its offer provide it a reasonable opportunity for profit''. The commenter states that while they understand that the concessioner ultimately determines by his business practices whether he will realize a profit, the whole intent of the statement in the law is that NPS should realize that its policies could prevent that profit from being realized if they were onerous and confiscatory. NPS makes this statement in the Prospectus to caution the offeror that the terms of an offer being presented must be realistic and achievable allowing a reasonable opportunity for profit. Other devises in the contract such as amendments, franchise fee reviews and arbitrations allow for adjustments necessitated through economic changes, policy review and revision.

A comment was made on the section entitled ''The Park Area and Its Mission'' regarding the planning documents and maintenance and operating plans for the park that are applicable. They note that plans are only as good as the commitment of those involved to carry out its terms and that no plans can be successful relating to the concession and operations and visitor services unless they involve the concessioner for meaningful input at the time of formulation. It is the standard practice of NPS to involve consultants versed in the type of operation proposed during the planning process. As the practice of awarding the contract for the operation of these facilities is a competitive process, completed at a future date, the actual concessioner cannot be involved in this pre-planning as the contract has not been executed. It is important that the planning, maintenance and operation documents be included in the prospectus so that an offeror can make an informed offer, taking the long and short term requirements into consideration.

The commenter discussed the need for flexibility in the term of the contract; Government Improvement and Capital Improvement accounts; Compensation and Possessory interest. These were issues for comment during the review of the Standard Contract Language and Final Rule for Concession Operations. These comments do not apply to this process.

The proposed application was questioned as it related to the alternatives presented for concessioner entitlement to present contract language on the Preference of renewal. NPS included the alternatives as a guide for future use of this sample. The issue of contract language change was addressed during the review period of that subject and does not apply to this process.

The commenter states that the proposed Application seems inconsistent with the statement that the financial contributions are secondary selection factors, when in fact, additional weight in the scoring process is clearly outlined here for more generous contributions to both the Government and Capital Improvement Accounts and the amount paid in Franchise Fees. They question that if the factors are secondary, why should they be given additional weight? NPS in considering an offer, requires that all the primary factors are met before the secondary factors are considered. In this way, should all offerors satisfy the requirements of the primary factors, there can be a means of determining a better offer by utilizing the secondary factors.

A second commenter expressed concern in regards to removing the possibility of incorporating a numerically-weighted system into the proposed evaluation process. NPS feels that a numerically-weighted system would not allow the flexibility required to deal with the diverse operations it manages. Due to the diversity of the operations, specifically stated criteria are designed for each application that address the unique needs of the park and visitor. A numerically-weighted system must be standardized to be effective, and the diversity of the operations for which concessioners are solicited could not be handled in this manner. The narrative system presents in clear and concise language the exact reasons that the panel would choose one offeror over another. There is no guarantee with a numerically-weighted system to insure that the offer being presented is the best overall offer. Should there become a need to present the reasons for selection at a later time, the justification for a decision based on a numerically-weighted system is not easily presented.

The Sample Prospectus and Related Guidelines document is intended to be only a sample document. It is not meant to be a document which must be used as written in every instance. It is to be modified as appropriate to fit the needs of individual situations. Further, this document is expected to be modified and refined over time as experience indicates that changes are needed and to meet the changing needs of the concession contracting program.

EFFECTIVE DATE: February 22, 1995.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Chief, Concessions Division, National Park Service,

Washington, D.C. 20013–7127. Telephone: (202) 343–3784.

Dated: February 3, 1995.

Maureen Finnerty,

Associate Director, Operations.

[FR Doc. 95–3676 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

Jacob Riis Park, Gateway National Recreation Area, NY; Concession Contract Negotiations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued operation of visitor parking facilities and services for the public at Jacob Riis Park, Gateway National Recreation Area, New York for a period of five (5) years from January 1, 1995, through December 31, 1999.

EFFECTIVE DATE: April 24, 1995.

ADDRESSES: Interested parties should contact the Regional Director, National Park Service, North Atlantic Region, Attention: Division of Concessions Program Management, 15 State Street, Boston, MA 02109–3572, telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on September 30, 1990. However, notwithstanding the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. § 20), the concessioner has relinquished and waived its right of preference in the renewal or extension of this permit. The contract will be awarded to the party submitting the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Chrysandra L. Walter,

Deputy Regional Director.

[FR Doc. 95–4318 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

Indian Memorial Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of Sub-committee on Design Competition Package.

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Sub-Committee producing the Design Competition Package. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, March 2, 1995, 1:30–5:00 p.m.; and Friday, March 3, 1995, 8:00–12:00 a.m., and 1:30–5:00 p.m.

Address: American Institute of Architects (AIA), Denver Chapter Office, 1526 15th Street, Denver, Colorado 80202: (303) 446–2266.

The Agenda of This Meeting Will Be: Continue work begun by the Indian Memorial Advisory Committee and the National Park Service Support Team to produce a package that establishes the structure, rules, processes that will guide an upcoming national design competition for the creation of a memorial to the Indian participants in the 1876 conflict at Little Bighorn Battlefield National Monument, located at Crow Agency, Montana. This meeting will incorporate help from a select group of four architects under the sponsorship of the AIA. The architects will provide professional insight into formulating and managing design competitions and will help steer the final decisions of the sub-committee. The components of the meeting will consist of a review of project progress to date and discussion/decisions about; competition staging; advertising and promotional strategies; applicant registration, rules, and fees; design competition language; design criteria; base data needs and format; evaluation criteria; jury composition and scoring/selection alternatives; stipends for finalists; awards and commendations (amounts and categories); competition and design development schedule; and transforming the final design into a finished product.

Supplementary Information: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''. . . to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

For Further Information Contact: Ms. Barbara A. Booher, Indian Affairs Coordinator and Indian Advisory Committee Liaison, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287, (303) 969–2511.

Dated: February 9, 1995.

Gerard Baker,

Superintendent, Little Bighorn Battlefield National Monument Designated Federal Official, National Park Service.

[FR Doc. 95–4317 Filed 2–21–95; 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 February 11, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 9, 1995.

Carold D. Shull,

Chief of Registration, National Register.

GEORGIA

Bibb County

Macon Historic District (Boundary Increase), Roughly, Adams St. and Linden Ave. S. W and N of Tattnall Sq. and Broadway and Third Sts. between Poplar and Pine Sts., Macon. 95000233

Macon Historic District (Boundary Decrease), Roughly bounded by College Pl., Calhoun and Elm and the CG RR tracks and Monroe, Jefferson, College and Hardeman. Macon, 95000234

MAINE

Cumberland County

Fitch's General Store and House, Long Hill Rd., E side, at jct. with ME 114, East Sebago, 95000215

Oxford County

Philbrook, Samuel D., House, 162 Main St., Bethel, 95000216

Piscataquis County

Slate House, 123 Church St., Brownville, 95000217

Waldo County

Pendleton, James G., House, 81 W. Main St., Searsport, 95000218

NEW JERSEY

Passaic County

Paterson City Hall, 155 Market St., Paterson, 95000232

NEW YORK

Greene County

Van Vechten, John, House, Susquehanna Tpk. (Co. Rd. 23B), Leeds, 95000212

Orange County

Peachcroft, River Rd., Montgomery, 95000211

Orleans County

Main Street Historic District, Roughly, along Main and Center Sts., West Ave. and Proctor Pl., Medina. 95000213

NORTH CAROLINA

Guilford County

Tabernacle Methodist Protestant Church and Cemetery, 5601 Liberty Rd., Greensboro, 95000231

Wake County

Apex Historic District (Boundary Increase), (Hake County MPS), Roughly bounded by E. Chatham, S. Hughes, S. Mason and E. Moore Sts., Apex, 95000210

TEXAS

Rusk County

Henderson Commercial Historic District, Roughly bounded by Charlevoix, Marshall, Elk and Van Buren Sts., Henderson, 95000219

VERMONT

Addison County

Field Farm (Agricultural Resources of Vermont MPS), Fuller Mountain Rd., Ferrisburgh, 95000214

WASHINGTON

Pierce County

Building at 1602 South G Street (Hilltop Neighborhood MPS), 1602 S. G St., Tacoma, 95000222
Building at 712–716 Sixth Avenue (Hilltop Neighborhood MPS), 712–716 Sixth Ave., Tacoma, 95000226
House at 1510 Tacoma Avenue South (Hilltop Neighborhood MPS), 1510 Tacoma Ave. S., Tacoma, 95000230
House at 1610 South G Street (Hilltop Neighborhood MPS), 1610 S. G St., Tacoma, 95000223
House at 2314 South Ainsworth Avenue (Hilltop Neighborhood MPS), 2314 S. Ainsworth Ave., Tacoma, 95000220
House at 2326 South L Street (Hilltop Neighborhood MPS), 2326 S. L St., Tacoma, 95000225
House at 605 South G Street (Hilltop Neighborhood MPS), 605 S. G St., Tacoma, 95000221
House at 708–710 South 8th Street (Hilltop Neighborhood MPS), 708–710 S. 8th St., Tacoma, 95000224
House at 802–804 South G Street (Hilltop Neighborhood MPS), 802–804 S. G St., Tacoma, 95000229
McIlvaine Apartments (Hilltop Neighborhood MPS), 920 S. 9th St., Tacoma, 95000227
Schultz Apartments (Hilltop Neighborhood MPS), 1002 S. 12th St., Tacoma, 95000228

[FR Doc. 95–4271 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–380 (1X)]

Huron and Eastern Railway Company, Inc.—Abandonment Exemption—in Huron County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the Huron and Eastern Railway Company, Inc.'s abandonment of a 9.81-mile segment of rail line, from milepost 8.69 near Ruth, to milepost 18.5, at Harbor Beach, in Huron County, MI.

DATES: The exemption will be effective on March 24, 1995, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by March 6, 1995; petitions to stay must be filed by March 9, 1995; requests for public use condition must be filed by March 14, 1995; and petitions to reopen must be filed by March 20, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–380 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., NW., Washington, DC 20423; and (2) Petitioner's representative: Robert A. Wimbish, 1920 N Street, NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5712.]

Decided: February 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4301 Filed 2–21–95; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Abandonment—Offers of Finan, Assist.,* 4 I.C.C.2d 167 (1987).

[Docket No. AB–290 (Sub-No. 166X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Aiken, Lexington, and Orangeburg Counties, SC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a segment of its rail line totalling 28.0 miles between milepost C–124.0, near Edmund, and milepost C–152.0, near Springfield, in Aiken, Lexington, and Orangeburg Counties, SC.

NS has certified that: (1) No local traffic has not moved over the line for at least 2 years; (2) no overhead traffic has not moved for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee 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 March 24, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's 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 in order to permit the Commission to review and act on the request before the exemption's effective date.

[2] See Exempt of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

49 CFR 1152.29[3] must be filed by March 6, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 14, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 27, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 10, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4302 Filed 2–21–95; 8:45 am]

BILLING CODE 7035–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The Bankruptcy Rules public hearing scheduled to be held in Washington, D.C. on February 24, 1995, has been cancelled. (Original notice of hearing appeared in the Federal Register of November 18, 1994 (59 FR 59793).

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C., telephone (202) 273–1820.

Dated: February 15, 1995.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 95–4261 Filed 2–21–95; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Judgment in *United States* v. *Bostic, et al,* Civil No. 92–101–4 (E.D.N.C), was lodged with the United States District Court for the Eastern District of North Carolina on November 8, 1994.

The Consent Judgment concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), resulting from the defendants' unauthorized conversion of 147 acres of pocosin wetlands on a 194-acre site in Onslow County, North Carolina. Before agreeing to the terms of the Consent Judgment, defendants completed restoration of part of the property to the satisfaction of the U.S. Environmental Protection Agency (''EPA''), the U.S. Army Corps of Engineers (''Corps''), and North Carolina state erosion experts. Under the Consent Judgment, defendants would admit liability for their violations and agree to pay a $60,000 civil penalty to the United States. They would further agree to establish a buffer zone along the southern edge of the violation site to protect nearby Mill Creek from future erosion or development and to then transfer title of this buffer zone to an approved third party grantee, such as the North Carolina Coastal Land Trust, within 180 days of signing the Consent Judgment. Failure to create the buffer zone or to comply with the transfer of title provision would result in the payment to the United States of an additional $40,000 in stipulated penalties.

The Department of Justice will receive written comments relating to the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Russell Young, Esquire, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, should refer to *United States* v. *Bostic, et al.,* Civil No. 92–101–4 (E.D.N.C.), and should also make reference to DJ# 90–5–1–1–3715.

The Consent Judgment may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, P.O. Box 25670, Raleigh, North Carolina 27611.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 95–4227 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Extension of Comment Period for Consent Decrees in United States v. Nalco Chemical Co., et al.

Notice is hereby given that the period for public comments on the two proposed Consent Decrees in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.), lodged on December 22, 1994 with the United States District Court for the Northern District of Illinois, has been extended to and including March 3, 1995. The proposed Consent Decrees resolve certain claims of the United States against the settling parties under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, relating to the Byron Superfund Site in Ogle County, Illinois. Under the *de minimis* Consent Decree, nine settling parties among the ''drum'' parties in the case will pay the United States $94,405.86. Under the second *de minimis* Consent Decree, six settling parties among the ''IPC customer'' parties in the case will pay the United States $429,045.17.

The United States published notice of the lodging of the Consent Decrees in the **Federal Register** on January 10, 1995. 60 FR 2613 (1995). In response to a request for an extension of the public comment period, the United States has elected to extend the comment period and to accept public comments received no later than March 3, 1995. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nalco Chemical Company, et al.,* D.J. Ref. No. 90–11–3–687.

The proposed Consent Decrees may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; the Region V Office of the United States, Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the

[3] The Commission will accept a late-filed trail use statements so long as it retains jurisdiction.

proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the first Consent Decree (the ''Drum'' Decree), please enclose a check in the amount of $7.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the second Consent Decree (the ''IPC Customer'' Decree), please enclose a check in the amount of $6.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of both Consent Decrees, please enclose a check in the amount of $13.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4282 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Taylor Lumber & Treating, Inc.*, Civil Action No. 93–858–JO was lodged on February 8, 1995, with the United States District Court for the District of Oregon. The Consent Decree settles the claims alleged against defendant, Taylor Lumber & Treating, Inc. (''Taylor'') in this action.

The Complaint was brought against Taylor pursuant to section 3008 (a), (g), and (h) of the Resource Conservation and Recovery Act (''RCRA''), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6928 (a), (g), and (h), for alleged violations associated with Taylor's owning and operating a land disposal facility where hazardous waste was stored and/or disposed of without a permit or interim status authorization (''the concrete vault''). The Complaint sought an order that Taylor pay a civil penalty for violations associated with its storage and/or disposal of hazardous waste in the concrete vault, complete closure of the concrete vault in accordance with Oregon's regulations, and perform corrective action at its facility located near Sheridan, Oregon to address releases of hazardous constituents and hazardous wastes into the environment.

Under the terms of the proposed Consent Decree, Taylor will complete closure of the concrete vault in accordance with Oregon's regulations, conduct a RCRA Facility Investigation and perform corrective action at its facility to address releases of hazardous constituents and hazardous wastes into the environment, and pay a civil penalty of $70,000 for the violations associated with the concrete vault.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Taylor Lumber & Treating, Inc.*, DOJ Ref. 1#90–7–1–667.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $28.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–4281 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States of America v. Playmobil USA, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* versus *Playmobil USA, Inc.*, Civil Action No. 95–0214. The Complaint alleged that Playmobil engaged in a combination and conspiracy with dealers to fix the price of children's toys in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment that Playmobil has agreed to prohibits it for a period of ten years from (A) agreeing with any dealer to fix or maintain the resale prices at which Playmobil's products may be sold; (B) discussing or encouraging adherence to Playmobil's suggested resale prices; (C) threatening to terminate or retaliate against a dealer for discounting; and (D) communicating information to any dealer relating to the termination of any other dealer due to discounting. Additionally, for five years Playmobil is barred from (E) terminating any dealer or taking any other action for reasons relating to that dealer's discounting of Playmobil products; (f) announcing that it will adopt any resale pricing policy under which a dealer may be terminated because of discounting; (G) acting, or representing that it will act, upon a dealer's complaint of another dealer's discounting; and (H) establishing any cooperative advertising policy that denies or reduces advertising allowances for any reason related to a dealer's advertised discount prices. These prohibitions are discussed more fully in the Competitive Impact Statement.

Playmobil is also required to appoint an antitrust compliance officer and establish an antitrust compliance program. This program is designed to inform Playmobil employees and agents about the consent decree and the antitrust laws, thereby helping to prevent future violations.

Public comment is invited within the statutory 60-day comment period. Such comments and responses to them will be published in the **Federal Register** and filed with the Court. Comments should be directed to Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Room 3700, Washington, DC 20530 (telephone: 202/514–8368).

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., 11 E. Nicholas Court, Dayton, NY 08810. Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Complaint

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action against the above-named

defendant and complains and alleges as follows:

I.

Jurisdiction and Venue

1. This complaint is filed under section 4 of the Sherman Act, as amended (15 U.S.C. 4), in order to prevent and restrain violations, as hereinafter alleged, by the defendant of section 1 of the Sherman Act (15 U.S.C. 1). This court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1337.

2. Defendant transacts business and is found in the District of Columbia.

II.

Definitions

3. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

4. ''Dealer'' means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

5. ''Playmobil product'' means any product sold or distributed by defendant for resale in the United States.

III.

Defendant and Co-Conspirators

6. Playmobil USA, Inc. (''Playmobil'') is made a defendant herein. Playmobil is a corporation headquartered in the District of New Jersey, organized and existing under the laws of the State of New Jersey.

7. Various companies and individuals who are dealers, not made defendants in this complaint, have been induced to participate by and have participated with the defendant in the offense charged herein and performed acts and made statements in furtherance of it.

IV.

Trade and Commerce

8. Playmobil is a prominent seller of specialty toys for children in the United States. Playmobil products are manufactured by Playmobil's parent company, Geobra Brandstatter GmbH & Co., KG., in Germany and sold and distributed in the United States by Playmobil.

9. Playmobil sells substantial quantities of Playmobil products to dealers throughout the United States, which in turn resell Playmobil products to consumers.

10. During the period covered by this complaint, there has been a continuous and uninterrupted flow in interstate commerce of Playmobil products from Playmobil's facilities in New Jersey to dealers throughout the United States. The activities of the defendant and its co-conspirators, as hereinafter described, have been within the flow of, and have substantially affected, interstate commerce.

V.

Violation Alleged

11. Beginning at least as early as February, 1990, and continuing at least through August, 1994, the exact dates being unknown to the United States, the defendant and its co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of section 1 of the Sherman Act, as amended (15 U.S.C. 1). This unlawful combination and conspiracy will continue or may be renewed unless the relief prayed for herein is granted.

12. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and its co-conspirators to fix and maintain the resale price of Playmobil products at the amount set by the defendant, Playmobil.

13. In furtherance of this combination and conspiracy, the defendant did the following things, among others:

(a) Established and communicated to dealers minimum resale prices for Playmobil products;

(b) Threatened to terminate dealers for selling or advertising Playmobil products at prices below defendant's minimum resale prices;

(c) Used threats of termination to secure dealers' adherence to defendants' minimum resale prices and to limit the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop ''price wars'' among them; and

(e) Agreed with dealers on the retail prices for Playmobil products to be charged by the dealers.

VI.

Effects

14. The aforesaid combination and conspiracy has had the following effects, among others:

(a) Resale prices of children's toys have been fixed and maintained; and

(b) Competition in the sale of children's toys by dealers has been restrained, suppressed, and eliminated.

VII.

Prayer for Relief

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendant has combined and conspired to restrain interstate trade and commerce of Playmobil products in violation of section 1 of the Sherman Act.

2. That the defendant, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy herein before alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concern of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That plaintiff have such other relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.

Anne K. Bingaman,
Assistant Attorney General
Robert E. Litan,
Mark C. Schechter,
Rebecca P. Dick,
Bruce K. Yamanaga,
Andrew S. Cowan,
Steven Semeraro,]
D.C. Bar No. 419612, Attorneys, Department of Justice Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.
Civil Action No. 95–0214

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendant and by filing that notice with the Court.

2. If plaintiff withdraws its consent or the proposed Final Judgment is not

entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceedings.

For the plaintiff:

Anne K. Bingaman

Assistant Attorney General

Robert E. Litan,

Mark Schechter,

Rebecca P. Dick,

Bruce K. Yamanaga,

Andrew S. Cowan,

Attorneys, U.S. Department of Justice, Antitrust Division, Civil Task Force, 1401 H Street, NW., Room 3700, Washington, DC. 20530, (202) 514–8368.

For the defendant:

Eugene J. Meigher,

Counsel for Playmobil, USA, Inc.

Certificate of Service

I certify that, on this day January 31, 1995, I have caused to be served, by messenger, a copy of the foregoing Stipulation, Final Judgment and Competitive Impact Statement on counsel of record for Playmobil USA, Inc. at the address below:

Eugene Meigher, Arent, Fox 1050 Connecticut Ave NW., 5th Floor, Washington, DC 20036

Andrew S. Cowan

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Playmobil USA, Inc., Defendant.

Civil Action No. 95–0214

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on _____, and plaintiff and defendant, Playmobil, USA, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without the Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, adjudged and decreed as follows:

I.

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II.

Definitions

As used in this Final Judgment:

A. ''Cooperative advertising policy'' means any policy or program under which defendant provides a dealer with any rebate, allowance, or reimbursement that relates to that dealer's advertising of Playmobil products.

B. ''Dealer'' means any person not wholly owned by defendant who has at any time purchased or acquired Playmobil products for resale, excluding any person who did not purchase or acquire Playmobil products directly from Playmobil or its agents.

C. ''Discount'' means to offer, sell or advertise any Playmobil product for resale at a price below defendant's suggested resale price.

D. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

E. ''Playmobil product'' means any product sold or distributed by defendant for resale in the United States.

F. ''Promotional event'' means a sale of offering of limited duration during which a dealer discounts a Playmobil product.

G. ''Resale price'' means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to Playmobil products sold by dealers.

H. ''Suggested resale price'' means any resale price level, including those related to everyday pricing or promotional pricing, that is suggested, endorsed, communicated, distributed or determined by defendant.

I. ''Terminate'' means to refuse to continue selling, either permanently or temporarily, any or all Playmobil products to a dealer.

III.

Applicability

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

Prohibited Conduct

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which defendant's products may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained from (1) discussing, explaining, or encouraging adherence to defendant's suggested resale prices with any dealer, (2) threatening or warning any dealer that it may be terminated or otherwise subjected to any action by the defendant for discounting, and (3) communicating to any dealer information relating to any actual or contemplated termination of any other dealer for any reason related to discounting.

C. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from directly or indirectly announcing to the public or to any present or potential dealer of its products that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for Playmobil products that: (1) Provides that defendant will sell only to a dealer that prices at or above suggested resale prices; (2) provides that defendant may or will terminate, or take any other action related to, a dealer for discounting; or (3) relates to the duration or frequency of any dealer's promotional events.

D. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from (1) representing that it will act on any complaint or communication from a dealer that relates to any other dealer's discounting, (2) discussing any such complaint or communication with the complaining dealer, except that defendant may state that it does not accept dealer complaints or communications that relate to the pricing practices of other dealers, and (3) terminating any dealer or taking any other action for reasons relating to that dealer's discounting.

E. Defendant is further enjoined and restrained for a period of five (5) years from the date of entry of the final judgment from adopting, promulgating, suggesting, announcing or establishing any cooperative advertising policy that denies or reduces advertising rebates, allowances or reimbursements to a

dealer for any reason related to that dealer's advertised prices.

F. Nothing in this Section IV shall prohibit defendant from (1) establishing suggested resale prices and communicating these prices to dealers, provided that such communications also state that these prices are only suggested prices and that dealers are free to adopt any resale price that they choose, or (2) terminating any dealer for reasons unrelated to that dealer's discountings.

V.

Notification Provisions

Defendant is ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty (60) days of the entry of this Final Judgment, to each dealer who purchased Playmobil products in 1993 or 1994.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases products from defendant within ten (10) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the first shipment of Playmobil products to such dealer.

VI.

Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers and directors and each of its employees, salespersons, sales representatives, or agents whose duties include supervisory or direct responsibility for the sale or advertising of Playmobil products in the United States, except for employees whose functions are purely clerical or manual;

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer, employee or agent who succeeds to a position described in Section VI (A);

C. Providing each person designated in Sections VI (A) or (B) with a written explanation in plain language of this Final Judgment, with examples of conduct prohibited by the Final Judgment and with instructions that each person designated in Section VI (A) and (B) shall report any known violations of the Final Judgment to the Antitrust Compliance Officer;

D. Arranging for an annual oral briefing to each person designated in Sections VI (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws, accompanied by a written explanation of the type described in Section VI. (C);

E. Obtaining (1) from each person designated in Sections VI (A) or (B) certification that he or she has read, understands and agrees to abide by the terms of this Final Judgment and is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (2) from each officer, director and employee certification that he or she understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

F. Maintaining (1) a record of all certifications received pursuant to Section VI (E); (2) a file of all documents related to any alleged violation of this Final Judgment; (3) a record of all communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation; and (4) a list of all persons terminated as dealers, or threatened with termination, after the effective date of this Final Judgment and all documents related to any such termination or threatened termination.

VII.

Certification

A. Within 75 days of the entry of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI (A) above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII.

Plaintiff Access

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during the defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview the defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an

opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

IX.

Duration of Final Judgment

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until ten (10) years from the date of entry.

X.

Construction, Enforcement, Modification and Compliance

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI.

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Appendix A

Dear Playmobil Dealer:

Since 1991, Playmobil USA has maintained a Retailer Discount Policy that provided for the termination of any Playmobil dealer that failed to adhere to certain Playmobil suggested price ranges. In January 1995, the Antitrust Division of the United States Department of Justice filed a civil suit that alleged that Playmobil enforced this policy in a manner that violated the antitrust laws by reaching agreements with some of its retailers about what their retail prices would be. Playmobil has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States.

I have enclosed a copy of the Order for your information. Under its terms, you as a Playmobil dealer are absolutely free to sell Playmobil products at whatever resale price you choose. Furthermore, Playmobil may not attempt to influence your discounting of Playmobil products, influence the duration or frequency of your promotional events, or condition advertising allowances on your adhering to Playmobil's suggested resale prices.

If you learn that Playmobil or its agents have violated the terms of the Order at any time after the effective date of the Order, you should provide this information to Playmobil in writing.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,_____

John Thorpe,

President Playmobil USA, Inc. 11 E. Nicholas Court Dayton, NJ 08810

In the United States District Court for the District of Columbia

United States of America, Plaintiff v. Playmobil USA, Inc., Defendant.

Case Number 1:95CV00214
Judge: James Robertson
Deck Type: Antitrust
Date Stamp: 01/31/95

Competitive Impact Statement

The United States of America, pursuant to section 2 of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On January 30, 1995, the United States filed a civil antitrust complaint under section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that the defendant Playmobil USA, Inc. (''Playmobil'') engaged in a combination and conspiracy, in violation of section 1 of the Sherman Act, 15 U.S.C. 1, to fix the retail prices of Playmobil children's toys throughout the United States. The complaint alleges that, in furtherance of this conspiracy, Playmobil from February 1990 through August of 1994:

(a) Established and communicated to dealers minimum resale prices for Playmobil toys;

(b) Threatened to terminate dealers for selling or advertising Playmobil toys at prices below those minimum resale prices;

(c) Through the threats of termination, secured dealers' adherence to those minimum resale prices and limited the duration of promotional sales by dealers;

(d) Enforced adherence to minimum resale prices at the behest of dealers in order to stop price wars among them; and

(e) Agreed with dealers on the retail prices the dealers would charge for Playmobil toys.

The complaint also alleges that as a result of the combination and conspiracy, prices of children's toys have been fixed and maintained, and competition in the sales of children's toys has been restrained.

The complaint alleges that the combination and conspiracy is illegal, and accordingly requests that this Court prohibit Playmobil from continuing or renewing such activity or similar activities.

The United States and Playmobil have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

II

Description of Practices Giving Rise to the Alleged Violation of the Antitrust Laws

Playmobil, a New Jersey corporation, is a prominent seller of specialty toys for children in the United States, with annual sales at wholesale in excess of $18 million. Playmobil imports its toys from Germany, where its parent company makes them. From New Jersey it distributes to retail toy stores in every state, and these stores in turn sell Playmobil toys to consumers.

Over the past several years, Playmobil regularly published what it termed ''Suggested Retail Price Ranges'' for all of its products. It also annually issued letters to all of its dealers setting forth a ''Retailer Discount Policy.'' The Playmobil letters facially expressed a well-defined, unilateral, dealer-termination policy under *United States* versus *Colgate & Co.*, 250 U.S. 300 (1919) that even included some safeguards to ensure that Playmobil and its dealers would not enter into resale price agreements. The stated policy said, in effect, that Playmobil would, *entirely on its own*, monitor its retailers and automatically, *without discussion*, refuse to sell to any dealer it determined was discounting beyond the prescribed limits (emphasis supplied). In the letters, Playmobil also committed not to further discuss the policy or anything related to it.

In practice, however, Playmobil ignored these restrictions: Playmobil personnel repeatedly contacted and pressured dealers in over a dozen states who reportedly were discounting below the policy's ''suggested'' minimum levels. Playmobil secured from a number of its dealers express agreements to follow Playmobil's published retail prices. Playmobil often expressly threatened a dealer with termination in order to obtain its agreement.

Frequently the impetus for Playmobil's actions was pressure from other dealers that did not want to face

price competition in the retail sales of Playmobil toys. Playmobil determined whether an accused dealer was in fact discounting beyond the ''suggested'' limits, and if it was, Playmobil forcefully ''discussed'' its resale pricing policy with the offending dealer.

If, after such discussions, the dealer did not agree to raise its prices, Playmobil responded with various threats—additional stores in the immediate area might begin carrying Playmobil toys, Playmobil might improperly process orders, a variety of shipping problems could occur. In some instances, Playmobil refused to sell additional toys to a dealer until after that dealer agreed to adhere to Playmobil's price ranges.

The volume of commerce affected by Playmobil's illegal conduct is difficult to estimate. Playmobil's illegal conduct was concentrated in the more than one dozen states where, at the urging of retail dealers that wanted to prevent price competition, it obtained illegal resale pricing agreements with potential discounters. Thus while it is difficult to estimate the total volume of commerce affected by Playmobil's violations, it clearly was substantial although significantly less than the entire $35 million in annual, nationwide, retail sales of Playmobil toys.

Playmobil, by using the devices described, was usually successful in inducing dealers to raise their prices. Indeed, the power of these actions was such that Playmobil never had to permanently sever its relationship with a dealer because of that dealer's continued discounting. Thus, the result of Playmobil's activities was to fix, raise and stabilize the prices at which toy retailers sold Playmobil products. The courts have routinely found conduct such as Playmobil's here to be a *per se* violation of the prohibition on agreements in restraint of trade under section 1 of the Sherman Act.

III

Explanation of the Proposed Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any continuation or renewal, directly or indirectly, of the type of combination or conspiracy alleged in the Complaint. Specifically, Section IV A prohibits Playmobil from entering into any agreement or understanding with any dealer to fix, stabilize or maintain any dealer's prices for Playmobil products in the United States.

The law permits a manufacturer unilaterally to announce and unilaterally to implement a policy of terminating discounters. *Colgate, supra.* The manufacturer may not, however, secure a dealer's *agreement* on retail price levels. *United States* v. *Parke, Davis & Co.*, 362 U.S. 29 (1960). If a dealer discounts, the manufacturer must choose either to continue to supply that dealer, knowing of its discounting practices, or to forego that retail outlet for its products in the future.

In this case, the Complaint alleges that Playmobil reached illegal agreements with its dealers in the course of discussions about discount pricing. Although discussions between a manufacturer and a dealer about resale pricing do not always result in an agreement about those prices, *see Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752 (1984), the evidence in this case showed, and the Complaint alleges, that Playmobil's discussions clearly led to, and in fact included, illegal agreements. *Isaksen* v. *Vermont Castings*, 825 F.2d 1158, 1164 (7th Cir. 1987), *cert. denied*, 486 U.S. 1005 (1988). To avoid a repetition of such episodes, Section IV B bars Playmobil from discussing, explaining, or encouraging dealers to adhere to suggested prices, threatening to terminate a dealer for discounting, or discussing a dealer's termination with another dealer. This prohibition addresses the central offense in this case and extends for the entire ten-year life of the decree.

The proposed Final Judgment not only bars Playmobil's unlawful practices, but also contains additional provisions that are remedial in nature, intended to restore competitive conditions in retail toy markets and in dealer relationships, both of which have been distorted by Playmobil's conduct from 1990 through August of 1994, as set forth in the Complaint. These provisions bar some activities that are not, in and of themselves, illegal, but which could nevertheless serve the same purpose as Playmobil's outright agreements to fix resale prices—preventing Playmobil dealers from selling or advertising at discount prices.

To establish a new pricing regime to replace the former illegally enforced regime, and to encourage retailers of Playmobil toys that previously could not offer Playmobil products at discount prices, because of Playmobil's illegal conduct, to exercise their ability to discount if they so wish, Sections IV C and D of the Final Judgment prohibit Playmobil for the first five years of the decree from reestablishing its resale price policy in any form, even forms that would be legal if Playmobil had never engaged in the illegal conduct alleged in the Complaint. Thus, Section IV C bars Playmobil from announcing policies to (1) sell only to non-discounting dealers, (2) terminate or hinder dealers for discounting, or (3) control the duration or frequency of a dealer's discounting. Section IV D 3 further ensures that regardless of its stated policies, Playmobil will not terminate or otherwise take actions against any dealer because of discounting. Under the decree, the only thing Playmobil may continue to do is to publish truly suggested retail prices, together with the clear statement that dealers are free to ignore the suggestions.

When it is clear that a manufacturer's suggested retail prices are informational only and strictly optional, they can serve useful market functions without adversely affecting competition. In such an environment, dealers become fully aware of and accustomed to exercising their pricing rights.

Since the problem with Playmobil's policy lay in the implementation of the policy rather than in the policy itself, the prohibition on adopting such a policy extends only for five years. Similarly, since Playmobil never improperly terminated any dealers, the prohibition on terminations also extends only for five years. Playmobil will thereafter regain its *Colgate* right unilaterally to announce a resale pricing policy and unilaterally to terminate non-complying dealers. Throughout the period, Playmobil will be able to disseminate its suggested retail prices, but it must make clear that actual retail sales prices will be set entirely at its dealers' discretion.

Subsections 1 and 2 of Section IV D of the Final Judgment also prohibit Playmobil from accepting dealer complaints about other dealers' pricing. In some cases, Playmobil was acting in response to dealers' complaints when it pressured other dealers to agree to charge higher retail prices. The complaints about discounting were the proximate cause of much of the illegal conduct alleged in the Complaint. Although a manufacturer's merely listening to a dealer's complaint about another's pricing does not necessarily violate the law, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717 (1988), the evidence here showed that the dealer complaints led directly to Playmobil's violations. Accordingly, in order to establish a period of time during which Playmobil's

and its dealers' conduct can become clearly legal, Playmobil has agreed not even to accept such communications from its dealers for five years.

Section IV E of the Final Judgment prohibits Playmobil from establishing a cooperative advertising program that conditions rebates in any way upon a dealer's adherence to certain advertising price levels. Playmobil did not have a cooperative advertising program, but its illegal price agreements with dealers were often triggered by advertising. In order to avoid any discussions at all with dealers on the sensitive issue of retail pricing, Playmobil has also agreed not to undertake a cooperative advertising program during the first five years of the decree. This will provide a period of time during which market conditions can become more competitive, and Playmobil and its dealers can become more accustomed to remaining within legal parameters.

Section V of the proposed Final Judgment is designed to ensure that Playmobil's dealers are aware of the limitations the Final Judgment imposes on Playmobil. Section V requires Playmobil to send notices and copies of the Judgment to each dealer who purchased Playmobil products from the defendant in 1993 or 1994. In addition, Playmobil must send notices and copies of the Judgment to every other dealer to which it sells Playmobil products within ten years of the date of the Judgment's entry.

Sections VI and VII require Playmobil to set up an antitrust compliance program and designate an antitrust compliance officer. Under the program, Playmobil is required to furnish a copy of the Judgment and a less formal written explanation of it to each of its officers and directors and each of its non-clerical employees, representatives, or agents responsible for the sale or advertising of Playmobil products in the United States.

In addition, the proposed Final Judgment provides methods for determining and securing Playmobil's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, Playmobil shall submit written reports, under oath, with respect to any of the matters contained in the Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents, of Playmobil.

Section IX makes the Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Judgment is in the public interest. The APPA conditions entry of the proposed Final Judment upon a determination by the Court that the proposed Final Judgment is in the public interest.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Rebecca P. Dick, Chief, Civil Task Force I, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 3700, Washington, DC 20530.

Under Section X of the proposed Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling either of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment considered by the Government was a full trial on the merits and on relief. Such litigation would involve substantial cost to the United States and is not warranted, because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

Determinative Materials and Documents

No particular materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the Government has not attached any such materials or documents to the proposed Final Judgment.

Dated:

Respectfully submitted,

Bruce K. Yamanaga,

Andrew S. Cowan,

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 3700, Washington, DC 20530, (202) 514–8368.

[FR Doc. 95–4283 Filed 2–21–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration; Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Serendipity Mining, Inc.

[Docket No. M–95–01–C]

Serendipity Mining, Inc., P.O. Box 1588, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 4 Mine (I.D. No. 15–17568) located in Whitley County, Kentucky. The petitioner proposes to monitor continuously with a hand-held methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with

drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Windsor Coal Company.

[Docket No. M–95–02–C]

Windsor Coal Company, P.O. Box 39, West Liberty, West Virginia 26074 has filed a petition to modify the application of 30 CFR 75.364(b)(1) and (2) (weekly examination) to its Windsor Mine (I.D. No. 46–01286) located in Brooke County, West Virginia. Due to deteriorating roof and rib conditions in the left side return air course of the East Mains from the 0+00 to 66+00 for a distance of approximately 6,600 feet, traveling or restoration of the affected area would be unsafe. The petitioner proposes to examine the area on a weekly basis by establishing check points G—No. 1 entry at approximately 0+50, and H—No. 1 entry at approximately 66+00; to examine the 1 North bleeder seal, 1 North seals, East Main seals, and 2 North seals (22 seals total); to have a certified person test for methane and the quantity of air at all check points on a weekly basis and record the results in a book kept on the surface and made available for inspection by interested persons; to install stoppings at the equalizing overcasts at approximately 23+00 and 65+00 to prevent the mixing of right side and left side returns; and to install a stopping at approximately 0+50 in the No. 2 entry to direct all air to check point ''G''. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Rosebud Mining Company.

[Docket No. M–95–03–C]

Rosebud Mining Company, Box 324 B, R.D. 2, Parker, Pennsylvania 16049 has filed a petition to modify the application of 30 CFR 75.333 (ventilation controls) to its Rosebud No. 3 Mine (I.D. No. 36–07843) located in Armstrong County, Pennsylvania. The petitioner proposes to use temporary ventilation controls on the intake side in the room necking procedure for rooms to be developed less than 600 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. R. & R. Anthracite Coal Company.

[Docket No. M–95–04–C]

R. & R. Anthracite Coal Company, R. R. 2, Box 21 B, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mt. Slope (I.D. No. 36–08498) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternative, when using the gunboat to transport persons, the petitioner proposes to use hoisting rope with a safety factor at least 3 times greater than required and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connection device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consolidation Coal Company.

[Docket No. M–94–05–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires and trolley feeder wires, high-voltage cables and transformers) to its Buchanan Mine (I.D. No. 44–04856) located in Buchanan County, Virginia. The petitioner proposes to use high-voltage cables (4,160 volts) in by the last open crosscut. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. C. S. & S. Coal Corporation.

[Docket No. M–95–06–C]

C. S. & S. Coal Corporation, P.O. Box 1234, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 7 Mine (I.D. No. 44–06762) located in Russell County, Virginia. The petitioner proposes to operate electric mobile equipment without canopies in seam heights up to 48 inches. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

7. Texasgulf, Inc.

[Docket No. M–95–01–M]

Texasgulf, Inc., P.O. Box 171, Weeping Water, Nebraska 68463 has filed a petition to modify the application of 30 CFR 57.11041 (landings for inclined ladderways) to its Limestone Mine (I.D. No. 25–00554) located in Cass County, Nebraska. The petitioner proposes to have two portals at the mine to serve as the primary and secondary escapeways. The petitioner proposes to have a vertical vent shaft 36 inches in diameter and 125 feet tall as an auxiliary escapeway for a extra safety measure in case the primary and secondary portals become blocked; and as an additional escapeway, the petitioner proposes to install a ladder with rungs 8 inches from the wall to the center of the rung and with a 15 inch x 10 inch step off point every 20 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Aluminum Company of America

[Docket No. M–95–02–M]

Aluminum Company of America, State Highway 35, Point Comfort, Texas 77978 has filed a petition to modify the application of 30 CFR 56.9300 (berms or guardrails) to its Bayer Alumina Plant (I.D. No. 41–00320) located in Calhoun County, Texas. The petitioner requests a modification of the mandatory standard to allow continued use of its already established methods of compliance of having signs posted at the entrances to the impoundment area stating that the roadways are not bermed; delineators at 25 feet intervals along the perimeter of the elevated roadways; the maximum speed limit posted at 15 mph on the elevated roadways; road surfaces well maintained with necessary repairs following periods of inclement weather. The petitioner has a locked, remotely operated electric gate at the main entrance to the impoundment area with 24 hour security, 7 days a week via closed circuit camera and TV monitor. Access to the gate is by permission only via telephones which are located outside the gate, or by two-way radios for maintenance personnel. The petitioner states that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or

received in that office on or before March 24, 1995. Copies of these petitions are available for inspection at that address.

Dated: February 10, 1995.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 95–4228 Filed 2–21–95; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Use of Alternative Means of Dispute Resolution; Policy Statement

AGENCY: National Science Foundation.

ACTION: Notice of policy statement.

SUMMARY: The National Science Foundation (the ''Foundation'') has developed a policy to address the use of alternative means of dispute resolution (ADR) within its administrative programs, as required by the Administrative Dispute Resolution Act, Public Law No. 101–552.

EFFECTIVE DATE: This policy statement is effective on February 22, 1995. Because it is a general statement of policy and addresses internal agency procedures and practices, no prior notice or opportunity for public comment is required.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Acting General Counsel and National Science Foundation Dispute Resolution Specialist, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230, (703) 306–1060.

SUPPLEMENTARY INFORMATION: On November 15, 1990, Congress enacted the Administrative Dispute Resolution Act (Public Law No. 101–552). The Act requires agencies to designate a senior official as its dispute resolution specialist and to adopt a policy addressing use of ADR in connection with an agency's administrative programs. Although the Act authorizes and encourages agencies to use ADR techniques as an alternative to traditional dispute resolution mechanisms, use of ADR is subject to agency discretion.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.)

Foundation Policy on ADR

The Foundation encourages the use of alternative methods of dispute resolution within its administrative programs. These methods, which include settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials and arbitration, provide alternatives to traditional adversarial proceedings. ADR techniques should be implemented in a way that will reduce costs and delays associated with adjudication, improve employee and constituent relations, and improve the efficiency and effectiveness of programs.

An ADR Task Force reviewed the types of disputes arising at NSF and the Foundation's procedures for resolving them. The Task Force concluded that existing informal mechanisms for resolving disputes between NSF and grantees are effective and consistent with ADR processes. However, the Task Force did identify one type of dispute which could benefit from the use of ADR techniques—employee discrimination complaints related to equal employment opportunity. As a result, NSF will implement a voluntary mediation program for resolution of employment discrimination complaints filed by NSF employees, and will either train Foundation employees to mediate such disputes or rely on an inter-governmental pool of mediators. The Foundation will make every effort to ensure the confidentiality of information provided to all participants in an ADR proceeding, consistent with applicable laws and regulations.

As circumstances change or new types of disputes arise, the Foundation will consider further use of ADR techniques. The Foundation encourages senior management officials to discuss other situations where ADR may be appropriate with NSF's Deputy General Counsel, who serves as the Foundation's Dispute Resolution Specialist.

Dated: February 14, 1995.

Lawrence Rudolph,

Acting General Counsel and Agency Dispute Resolution Specialist.

[FR Doc. 95–4221 Filed 2–21–95; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 8, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, March 8, 1995—9:00 a.m.–12 noon.

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–4262 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Extension of Comment Period

The Nuclear Regulatory Commission has extended the public comment period on Draft Regulatory Guide DG–0005, ''Applications for Licenses of Broad Scope,'' until March 31, 1995, to

give interested parties adequate time to prepare their comments on this draft guide. DG–0005 is the Second Proposed Revision 2 to Regulatory Guide 10.5, which was issued in October 1994 (noticed at 10 CFR 55141). This guide is being revised to provide guidance on the type and extent of information needed by the NRC staff to evaluate applications for a specific license of broad scope for byproduct material.

Comments received after March 31, 1995, will be considered if it is practical to do so, but the NRC can assure consideration only for comments received by this date. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672.

Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''F—Regulatory, Government Administration and State Systems,'' then selecting ''A—Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''A—U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Md, this 14th day of February 1995.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 95–4267 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–31252; License No. 35–26996–01; EA 95–018]

Blackhawk Engineering, Inc., and Maria Hollingsworth (dba Blackhawk Engineering, Inc.) Tulsa, OK; Order to Cease and Desist Use and Possession of Regulated Byproduct Material

I

Blackhawk Engineering, Inc. (Blackhawk) was issued Byproduct Material License 35–26996–01 by the Nuclear Regulatory Commission (NRC or Commission) on August 22, 1989. The license authorized the possession and use of cesium–137 and americium–241 in gauges, in accordance with the conditions specified therein. The license expired on August 31, 1994, and the licensee did not submit a renewal application 30 days prior to the expiration date, as required by 10 CFR 30.37. Furthermore, the NRC has determined that Blackhawk Engineering, Inc., has not been recognized as a corporation in the state of Oklahoma since February 20, 1987, when the State of Oklahoma suspended Blackhawk's corporate status. Thus, although Blackhawk has been doing business as Blackhawk Engineering, Inc., it was not a legal corporation recognized by the State of Oklahoma or the NRC. The president of Blackhawk is Maria Hollingsworth.

II

On August 30, 1994, an NRC Region IV employee placed a phone call to Maria Hollingsworth, the president of Blackhawk, to discuss the August 31, 1994 license expiration. Records of that phone call indicate that Ms. Hollingsworth said she had received a renewal package from NRC and that she planned to send a renewal application within 30 days. No renewal application was received. Ms. Hollingsworth has stated in a recent interview with an NRC investigator on January 12, 1995, that she had apparently confused payment of an NRC annual fee with license renewal at the time of the August 1994 call, and stated ''I had no idea I had to submit another application.''

On November 3, 1994, an NRC Region IV employee again called Ms. Hollingsworth and discussed the fact that Blackhawk's NRC license had expired and, therefore, in accordance with 10 CFR 30.36(c)(1)(i), Blackhawk was no longer authorized to use NRC-regulated gauges listed on the license, *i.e.*, gauges containing sealed sources of radioactive material. During this call, the NRC instructed Ms. Hollingsworth to secure these gauges and maintain them in storage, and confirmed her

commitment to submit a new license application. These commitments were confirmed by NRC in a November 8, 1994 Confirmatory Action Letter (CAL) to Ms. Hollingsworth. The CAL described the commitments that she had made, including her commitment to ''Ensure that licensed material is not used until this matter is resolved and a specific license authorizing possession and use of byproduct material is issued from this office.'' Her receipt of the CAL was confirmed on November 23, 1994, during another telephone call from NRC Region IV. On December 19, 1994, NRC Region IV conducted an inspection of Blackhawk.

In January 1995, the NRC Office of Investigations began an investigation based on concerns about the accuracy of Ms. Hollingsworth's statements to NRC personnel during the December 19, 1994 inspection. Ms. Hollingsworth was interviewed by an NRC investigator and, in a signed, sworn statement on January 12, 1995, she admitted that she understood in November 1994 that she should no longer use the gauges; admitted that she had used gauges containing byproduct material up until December 22, 1994, to complete a construction job; and admitted that she had not been truthful when she told the NRC inspector, during the December 19, 1994 inspection, that she had not used any gauges since 1992. She stated ''I needed to get the job done and I thought by not telling * * * the truth I could go ahead and get the job done.''

III

Based on the above, Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., has willfully violated NRC requirements by deliberately using NRC-regulated material in violation of 10 CFR 30.36(c)(1)(i), and by deliberately making false statements to NRC personnel in violation of 10 CFR 30.9. These deliberate violations also constitute a violation of 10 CFR 30.10, which prohibits deliberate misconduct. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. By her actions, Ms. Hollingsworth has demonstrated that she is either unwilling or unable to comply with Commission requirements and cannot be trusted to provide complete and accurate information to the Commission. Furthermore, Ms. Hollingsworth is currently in possession of NRC-regulated byproduct material without a valid NRC license.

Consequently, I lack the requisite reasonable assurance that the health and safety of the public will be protected. Therefore, the public health, safety, and interest require that Blackhawk Engineering, Inc. and Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., be required to cease and desist unauthorized possession of regulated byproduct material and to provide certification to the NRC that all regulated byproduct material has been transferred to authorized recipients.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR parts 20 and 30, it is hereby ordered that Blackhawk Engineering, Inc. and Maria Hollingsworth, doing business as Blackhawk Engineering, Inc., shall:

A. Immediately cease and desist from any further use of byproduct material now in their possession, with the exception that sealed source(s) containing cesium–137 or americium-241 shall be tested for leakage by a person authorized to perform the test prior to the transfer of the source(s) to another person or entity if a leak test has not been performed within the last six months prior to transfer.

B. Maintain safe control over the byproduct material, as required by 10 CFR part 20, by keeping the material in locked storage and not allowing any person access to the material, except for purposes of assuring the material's continued safe storage, until the material is transferred to a person authorized to receive and possess the material in accordance with the provisions of this Order and the Commission's regulations.

C. Within 30 days of the date of this Order, transfer all byproduct material to a person authorized to receive and possess it.

D. At least two working days prior to the transfer of the byproduct material, notify Ms. Linda Howell, Region IV, by telephone (817–860–8213) so that the NRC may, if it elects, observe the transfer of the material to the authorized recipient.

E. Within seven days following completion of the transfer, provide to the Regional Administrator, Region IV, in writing, under oath or affirmation: (1) Confirmation, on NRC Form 314, that the byproduct material has been transferred; (2) the last date that the byproduct material was used; (3) a copy of the leak test performed prior to transfer; (4) a copy of the survey performed in accordance with 10 CFR 30.36(c)(1)(v); and (5) a copy of the certification from the authorized recipient that the source has been received.

Copies of the response to this Order shall be sent to the Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

After reviewing the response, the NRC will determine whether further action is necessary to ensure compliance with NRC requirements.

Dated at Rockville, Maryland this 14th day of February 1995.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 95–4269 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Order Approving the Decommissioning Plan and Authorizing Decommissioning of Facility

I

The Yankee Atomic Electric Company (YAEC, the licensee) is the holder of Facility Operating License No. DPR–3 issued by the U.S. Nuclear Regulatory Commission (NRC, the Commission) formerly the Atomic Energy Commission, pursuant to 10 CFR Part 50 on July 9, 1960. The license was amended on August 5, 1992, to remove the authority of the licensee to operate the Yankee Nuclear Power Station (YNPS, the plant). The facility is located on the licensee site in the Town of Rowe, Franklin County, Commonwealth of Massachusetts.

II

On October 1, 1991, the plant was shut down for an evaluation of potential reactor vessel integrity problems. In February 1992, all fuel was removed from the reactor vessel to the Spent Fuel Pit. By letter dated February 27, 1992, YAEC informed the NRC that the plant was permanently shut down and that decommissioning would commence. This action initiated the two year clock in 10 CFR 50.82 that requires submittal of a decommissioning plant within that time interval. YAEC submitted the Decommissioning Plan (Plan) on

December 20, 1993 which included an Environmental Report.

On March 29, 1994, in accord with 10 CFR 50.82(e), a Notice of Receipt of Decommissioning Plan and Environmental Report and Opportunity for Public Comments was published in the **Federal Register**, (59 FR 14689). Due to public interest in the decommissioning process, the Federal Register Notice announced a local meeting to provide the public an opportunity to make comments on the Plan. The meeting, an informal public hearing, was held in August 1994 in Franklin County and was transcribed. The public comments have been addressed in Appendix A to the attached Safety Evaluation. In addition, the staff held a second meeting, the day after the meeting on the Plan, to give the public an opportunity to present concerns on issues outside the Plan. This follow-up meeting was also transcribed and the staff has provided separate written responses to all of these concerns by letters dated May 10 and September 23, 1994.

The major concerns of the public are the perceived impacts of Yankee Rowe power generation and decommissioning on the Deerfield River Valley and a claim of denial of public participation in the decommissioning process. This latter concern is at issue in a case heard before the U.S. Court of Appeals for the First Circuit in Boston, Massachusetts on January 10, 1995. A decision will be rendered in the near future. In regard to the first concern, the plant has been required to comply with 10 CFR Part 20 throughout the 31 years of power operation and during the decommissioning process to date, and based on many NRC and Commonwealth of Massachusetts inspections, the staff concludes that there are no impacts resulting from Yankee Rowe that have diminished public health and safety in the Deerfield River Valley.

III

The NRC has reviewed the YAEC Plan with respect to the provisions of the Commission rules and regulations and has found the decommissioning as stated in the YNPS Plan will be consistent with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public.

The staff concluded that this order should contain a condition that specifies the method by which the licensee may make changes to the Plan, the Final Safety Analysis Report, or the facility.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, and 161o, of the Atomic Energy Act of 1954 (as amended), 10 CFR 50.82, the YNPS Decommissioning Plan is approved and decommissioning of the plant is authorized subject to the following condition:

With the respect to changes to the facility or procedures described in the updated FSAR or changes to the Decommissioning plan, and the conduct of tests and experiments not described in the FSAR, the provisions of 10 CFR 50.59 shall apply.

Pursuant to 10 CFR 51.21, 51.30, and 51.35, the Commission has prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. Based on that assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

V

For further details with respect to this action see: (1) The application for authorization of decommission the facility, of December 20, 1993, as supplemented August 5, August 22, October 24 and October 26, 1994. These documents are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and at the Local Public Document Room located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland this 14th day of February 1995.

For the Nuclear Regulatory Commission.

William T. Russell,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 95–4268 Filed 2–21–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7137, File No. S7–6–95]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference on uniformity of securities laws and requesting written comments.

SUMMARY: In conjunction with a conference to be held on March 27, 1995, the Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for the conference. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, to maximize the effectiveness of securities regulation in promoting investor protection, and to reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held on March 27, 1995. Written comments must be received on or before March 22, 1995 in order to be considered by the conference participants.

ADDRESSES: Written comments should be submitted in triplicate by March 22, 1995 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comments should refer to File No. S7–6–95 and will be available for public inspection at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: William E. Toomey or Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the ''Securities Act'').[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with the federal securities laws as well as all applicable state laws and regulations. It has long been recognized that there is a need to increase uniformity between federal and state regulatory systems, and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the

[1] 15 U.S.C. 77a *et seq.*

enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The policy of that section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and a reduction in the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1995 meeting will be the twelfth such conference.

II. 1995 Conference

The Commission and the North American Securities Administrators Association, Inc. (''NASAA'')[3] are planning the 1995 Conference on Federal-State Securities Regulation (the ''Conference'') to be held March 27, 1995 in Washington, DC. At the Conference, representatives from the Commission and NASAA will form into working groups in the areas of corporation finance, market regulation, investment management, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives of the Commission and NASAA in an effort to promote frank discussion. However, each working group in its discretion may invite certain self-regulatory organizations to attend and participate in certain sessions.

Representatives of the Commission and NASAA currently are formulating an agenda for the Conference. As part of that process the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects sought to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, and enforcement.

(1) Corporation Finance Issues

a. Forward-looking Information

On October 13, 1994, the Commission issued a concept release[4] regarding disclosure of forward-looking information and the effectiveness of the safe harbor provisions for that type of disclosure.[5] The concept release requests comment from the public on various alternatives to the safe harbor provisions that have been proposed by several people. In addition, the Commission will hold public hearings in Washington, DC and in San Francisco, California on February 13 and 16, 1995, respectively, concerning these issues. The conference participants will discuss and consider the issues regarding the use of forward-looking information in disclosure documents and the Commission's safe harbor provisions.

b. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. The Commission working with the states toward this goal, developed Rule 505 of Regulation D, the federal exemption for certain limited offerings, while NASAA crafted the complementary Uniform Limited Offering Exemption (''ULOE'').

ULOE provides the framework for a uniform exemption from state registration for certain issues of securities which would be exempt from federal registration by virtue of Regulation D. To date, more than half the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward its universal adoption. The conferees will discuss the continued usefulness of ULOE, as well as possible steps to encourage its adoption by the remaining states. Further, consideration will be given to whether there are alternative exemptive methods which might be suitable for coordination among the states and the federal system, either within or outside of the ULOE framework.

c. Small Business Initiative

On July 30, 1992, the Commission adopted a number of rulemaking changes, often described as the Small Business Initiative, which were designed to streamline and simplify the Commission's regulatory system applicable to the public sale of securities by small businesses, and to provide new opportunities for investors, consistent with the Commission's obligations to protect such investors.[6] Among other things, the ceiling for the Regulation A exemption was raised from $1,500,000 to $5,000,000, and issuers contemplating a Regulation A offering were, for the first time, permitted to use a written document to ''test the waters'' for investor interest prior to assuming the expense of an offering.

The participants will discuss the impact of these changes, and the need for any additional exemptive relief in the small business area. The participants will also review their experience with amended Regulation A and the use of ''test the waters'' documents.

Public comment is invited on the efficacy of the Small Business Initiative as a whole. Comment is also sought with respect to any other exemptions that might be developed to enhance the ability of small issuers to raise capital, while protecting legitimate interests of investors.

d. Disclosure Policy and Standards

The Commission regularly reviews and revises its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination of this effort with the states has been extremely helpful. Commenters are invited to discuss areas, and particularly whether or not there are particular industries, where federal-state cooperation in addressing disclosure standards could be of special significance as well as any ways in which federal-state cooperation could be improved. Comment is also sought on the application of plain language principles to disclosure documents that are becoming increasingly lengthy and complex.

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[2] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[4] Securities Act Release No. 7101 (October 13, 1994) (59 FR 52723).

[5] See Securities Act Rule 175, 17 CFR 230.175; Securities Exchange Act Rule 3b–6, 17 CFR 240.3b–6.

[6] Securities Act Release No. 6949 (July 30, 1992) (57 FR 36442).

e. Multinational Securities Offerings

The Commission has recently adopted a number of changes to its rules and forms designed to facilitate access by foreign issuers to the U.S. capital markets. On April 19, and December 13, 1994, the Commission adopted amendments designed to streamline the registration and reporting process for foreign companies accessing the U.S. public markets by expanding the availability of short-form and shelf registration and streamlining the reconciliation and reporting requirements.[7] Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

f. Debt Market Initiatives

On November 10, 1994, the Commission adopted amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 (''Exchange Act'') that are intended to improve disclosure in the secondary market for municipal securities.[8] The amendments prohibit a municipal securities dealer from underwriting an issue of municipal securities unless the issuer undertakes to provide annual financial information and notices of material events to the market by lodging that information with informational repositories. The amendments also prohibit the recommendation of a municipal security unless the dealer has procedures in place to provide reasonable assurance that it will receive promptly any event notices with respect to that security.

The amendments follow upon a March 9, 1994 interpretive release issued by the Commission that addressed the disclosure obligations of issuers and other market participants under the antifraud provisions of the federal securities laws in both the primary and secondary markets for municipal securities.[9]

The Conference participants will discuss these developments and other matters with respect to municipal securities. In addition, they will discuss the Commission's recent proposals concerning disclosure of security ratings.[10]

g. Derivatives

Derivatives are financial or commodity instruments which derive their value from an interest rate, equity price, market or other defined index, foreign currency exchange rate, commodity price of other identified measure. While derivatives typically are described as including futures, forwards, swaps and options, other instruments such as structured notes, interest-only and principal-only strips, inverse floaters and indexed debt and equity instruments are included in the broader definition of derivatives because they have similar risk characteristics. Recently published data indicate that the notional amount of derivatives worldwide exceeds $12 trillion.

Investments in derivative and similar instruments expose investors to potential gains or losses linked to the changes in the underlying variable. The increasing complexity and widespread use of derivatives for trading and risk management purpose has generated widespread interest. In 1994 a number of corporate issuers, investment companies and municipalities experienced significant losses on derivative instruments and structured instruments. The Commission has undertaken a number of initiatives to address disclosure, accounting and sales practices involving derivatives and similar instruments. Conferees will discuss the application of federal and state securities laws to derivatives and similar instruments as well as disclosure issues relating to issuances of and investments in these instruments.

(2) Market Regulation Issues

a. Central Registration Depository (''CRD'')

The CRD is a computerized filing and data processing system operated by the NASD that maintains information concerning registered broker-dealers and their associated persons. The NASD is currently in the process of implementing a comprehensive plan to redesign the CRD. The redesigned system, which is expected to be fully operational in 1996, will be expanded to enhance its regulatory function for use by the states, self-regulatory organizations, and the Commission. Among the improvements anticipated are (1) Streamlined presentation and capture of data, (2) better access to information (*e.g.*, the ability to create and retrieve standardized and specialized computer searches), and (3) electronic filing of uniform Forms U–4, U–5, and BD, discussed below.

The participants will discuss the status of the CRD redesign project, as well as issues relating to operation of the existing CRD system.

b. Forms Revision

In connection with the CRD redesign, NASAA has adopted amendments to Form U–4,[11] the uniform form for registration of associated persons of a broker-dealer. The revisions to Form U–4 respond to certain recommendations addressed in the CRD redesign and primarily are designed to facilitate the conversion of data from the existing CRD system to the newly designed CRD. The Commission recently has proposed for public comment similar amendments to Form BD, the uniform broker-dealer registration form under the Exchange Act.[12] The proposed revisions to Form BD are intended to facilitate retrieval of disciplinary information by eliciting more precise information about broker-dealers and their securities business, and by reorganizing disclosure items into related categories.

The participants will discuss issues relating to the revisions to Forms U–4 and BD, including the disclosure of customer complaint history of registered personnel of broker-dealers and issues raised by the comment letters on the proposed amendments to Form BD.

c. Bank Securities Activities

The NASD recently has proposed rules that would govern the conduct of member broker-dealers operating on financial institution premises.[13] The proposed rules respond to concerns expressed by NASD members about the lack of clear guidance with respect to the activities of bank-affiliated broker-dealers and third-party broker-dealers operating on the premises of financial institutions pursuant to a networking arrangement. The NASD Notice to Members states that, as proposed, the rules adopt investor protection principles similar to those set forth in a recent no-action letter issued by the staff of the Commission,[14] and an interagency statement issued by the four banking regulators (''Interagency Statement'').[15] For example, consistent

[7] Securities Act Release No. 7053 (April 19, 1994) (59 FR 21644); Securities Act Release Nos. 7117, 1778, 7119 (December 13, 1994) (59 FR 65628, 59 FR 65632, 59 FR 65637).

[8] Securities Exchange Act Release No. 34961 (November 10, 1994) (59 FR 59390).

[9] Securities Exchange Act Release No. 33741 (March 9, 1994) (59 FR 12748).

[10] Securities Act Release No. 7086 (August 31, 1994) (59 FR 46314).

[11] *See* NASAA Reports (CCH) ¶ 4161 (1994).

[12] Securities Exchange Act Release No. 35224 (Jan. 12, 1995), (60 FR 4040).

[13] *See* NASD Notice To Members 94–94 (Dec. 1994).

[14] *See* Letter re: Chubb Securities Corporation (Nov. 24, 1994).

[15] *See* Interagency Statement On Retail Sales Of Nondeposit Investment Products, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of The

Continued

with the staff no-action letter and the Interagency Statement, the rules would require members to enter into a written agreement with the financial institution that describes the responsibilities of the parties and the conditions of the agreement, including the physical location of the broker-dealer, customer disclosures, compensation, supervisory responsibilities, solicitation of customers, and communications with the public.

The participants will discuss these proposed rules and other concerns raised by sales of securities on the premises of financial institutions, including inspections by banking and securities regulators and licensing of financial institution salespersons.

d. Municipal Securities

The Commission has been working with Congress, other regulators, and industry participants on a number of issues relating to the municipal securities market, including ways of improving dissemination of disclosure in the primary and secondary markets. As indicated in the Corporation Finance portion of this tentative agenda, the Commission recently adopted amendments to Rule 15c2–12 in furtherance of this goal.[16]

The Commission also adopted amendments to Rule 10b–10,[17] which will require brokers-dealers to disclose (1) When a debt security is not rated by a nationally recognized statistical rating organization; (2) if they are not members of the Securities Investor Protection Corporation (except, in limited circumstances, for transactions in mutual fund shares); (3) the availability of information with respect to transactions in collateralized debt securities; and (4) the amount of any mark-ups and mark-downs in certain NASDAQ and regional exchange-listed securities that are subject to last sale reporting. In a related release, the Commission adopted Rule 11Ac1–3 and amendments to Rule 10b–10, which, together, will require broker-dealers to disclose on customer confirmations, account statements, and new accounts documents whether payment for order flow is received by the broker-dealer for transactions in certain securities and the fact that the source and nature of the compensation received will be furnished upon written request.[18]

The participants will discuss how Rule 11Ac1–3 and amendments to Rules 10b–10 and 15c2–12 will affect the securities industry. In addition, the participants will discuss the progress made by the Municipal Securities Rulemaking Board and the Public Securities Association toward enhanced price transparency in the municipal securities market.

e. Sales Practice Activities

In May of last year, the Commission released the findings of the Large Firm Project. The Project involved a review of the hiring, supervisory, and retention practices at nine of the country's largest retail brokerage firms conducted by the Commission, the NYSE and the NASD. As a result of the Project, the Commission staff proposed a number of recommendations to strengthen broker-dealer compliance systems, enhance SRO efforts, and reinforce the Commission's principal mandate of investor protection. The participants will discuss the status of those recommendations, as well as other initiatives resulting from the Large Firm Project, including Commission policy on re-entry into the securities industry of individuals subject to a Commission bar.

The Commission is in the process of conducting another joint regulatory examination sweep in coordination with the NASD, the NYSE and NASAA. Rather than focus on particular large firms as the staff did during the Large Firm Project, during this sweep the staff will include firms of all sizes and will target so-called ''rogue'' or problem registered representatives throughout the industry. Participants will report on the status of the current sweep.

f. Cold Calling

Broker-dealers, like all firms engaged in telemarketing, are subject to the Telephone Consumer Protection Act of 1991 and a Federal Communications Commission (''FCC'') rule promulgated thereunder.[19] Pursuant to the FCC rule, telemarketers must establish time-of-day restrictions, ''do-not-call'' lists, training requirements, supervisory procedures, and identification requirements. Moreover, in August 1994, new legislation entitled the Telemarketing and Consumer Fraud and Abuse Prevention Act was passed that will require the Federal Trade Commission (''FTC'') to enact cold-calling rules and to direct the SEC to adopt substantially similar rules within six months of the FTC rules.

The Commission has been considering various methods to curtail abusive cold-calling practices in the securities industry and will discuss with participants what actions might be taken in advance of the FTC rules.

g. Continuing Education

The Industry/Regulatory Council on Continuing Education, composed of representatives from the SROs, a cross-section of firms, and liaisons from NASAA and the SEC, is developing a continuing education curriculum to improve practices throughout the industry. Under the Council's proposed program, every broker-dealer will be required to provide its registered representatives and first-line supervisors with annual continuing education relating to products and services. In addition, the Council proposed that all registered representatives who have been registered less than ten years or who have been the subject of serious disciplinary action receive compliance, ethics, and sales practice training. Two working committees are developing the elements of the program. The committees have drafted enabling rules and designed the program structure, content, and delivery mechanisms. The Council received approval of the rules on February 8, 1995 and expects to implement the program in July 1995. Participants will discuss issues involved in implementing the continuing education program.

h. Three Day Settlement

In October 1993, the Commission adopted Rule 15c6–1 which will become effective June 7, 1995. The rule establishes three business days as the standard settlement time frame for most broker-dealer transactions. Since the date of adoption, many broker-dealers have been encouraging their retail customers to leave securities in street name and to open up money management accounts in order to meet the three day settlement requirements. While this practice is acceptable, it is a misrepresentation to state that the rule requires customers to leave assets with broker-dealers. The participants will discuss potentially abusive sales practices used by broker-dealers including misrepresentation of the requirements of the rule.

(3) Investment Management Issues

a. Investment Company Disclosure

Over the last decade, investment company assets—particularly assets

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Comptroller of the Currency, and Office of Thrift Supervision, (Feb. 15, 1994).

[16] See notes 8 and 9 supra and accompanying text.

[17] Securities Exchange Act Release No. 34962 (Nov. 10, 1994), (59 FR 59612).

[18] Securities Exchange Act Release No. 34902 (Oct. 27, 1994), (59 FR 55006).

[19] Pub. L. No. 102–243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. 227 (1992)); 47 CFR 64.1200 (1992).

invested in open-end investment companies, or ''mutual funds''—have grown steadily. The conferees will discuss a number of Commission initiatives aimed at improving disclosure to mutual fund investors.

The conferees will discuss ways to improve the quality of information regarding mutual funds available to investors, particularly less experienced investors, as well as federal and state efforts toward more uniform federal and state investment company disclosure requirements. The conferees will also discuss the steps they are taking to examine and to improve the clarity and adequacy of mutual fund prospectuses.

In response to a request from certain members of Congress, the Division of Investment Management prepared a study dated September 26, 1994 on the use of derivatives by mutual funds. As part of its study, the Division recommended that the Commission consider seeking public comment in early 1995 on alternatives for improving risk disclosure in mutual fund prospectuses. The conferees are expected to discuss issues relating to investment company risk disclosure, including the possible use of quantitative risk measurement. In addition, the conferees will discuss ways to facilitate investor access to information about portfolio securities held by funds.

The Commission recently proposed rule and form amendments relating to the reporting of expenses by investment companies.[20] The proposed amendments would require an investment company to reflect as expenses in its financial statement certain liabilities of the company paid by broker-dealers in connection with the allocation of the company's brokerage transactions to the broker-dealers. The amendments are intended to enhance the information provided to investors so that they may better assess investment company expenses and performance. The conferees are expected to discuss this proposal and the comments that the Commission has received.

In October of 1994, the Commission adopted significant revisions to the proxy rules applicable to funds.[21] The amended rules are the first significant revisions to the fund proxy rules since 1960 and reflect the Commission's commitment to improved disclosure for fund shareholders. The conferees are expected to discuss the revised rules.

b. Investment Advisers

On March 16, 1994, the Commission proposed two new rules under the Investment Advisers Act of 1940 (''Advisers Act'').[22] One of these rules would expressly prohibit investment advisers from making unsuitable recommendations to clients; the other proposed rule would prohibit registered investment advisers from exercising investment discretion over client accounts unless they reasonably believe that the custodians of those accounts send account statements to the clients at least quarterly. The conferees will discuss the status of the proposed rules.

The conferees will also discuss ways in which the Commission and the states can coordinate their respective investment adviser inspection programs and efforts to identify investment advisers that have failed to register as such with the Commission or the appropriate state authorities.

(4) Enforcement Issues

In addition to the above-stated topics, the state and federal regulators will discuss various enforcement-related issues which are of mutual interest.

(5) Investor Education

Recently, the Commission announced a number of initiatives to aid investors in understanding how to invest wisely and protect themselves from abusive and fraudulent industry practices. The States and NASAA have a longstanding commitment to investor education and the Commission is intent on coordinating and complementing those efforts to the greatest extent possible. The participants at the conference will discuss investor education and potential joint projects in each of the working group sessions. They will specifically consider the results of recent Commission activities in this area: Information generated at a series of town meetings and investor forums; public reaction to a new toll-free information line for investors and a new electronic bulletin board which provides information about the Commission and its responsibilities; the usefulness of other explanatory informational materials, including new pamphlets provided by the Commission to the public; and the progress of Commission efforts to develop ''plain English'' instructions for mandatory disclosure items, and guidelines for simpler summaries of information in required filings. Future projects to be considered will include the following: (1) Developing an ''Investor Information Kit'' for novice or unsophisticated investors that includes basic information that every investor should know in an easy-to-use format; (2) developing a model curriculum for high school classes and adult seminars on the basics of how to invest wisely and what to do if a problem arises; and (3) designing a distribution plan for Commission educational products to assure that information is provided to investors when they are in the process of making major investment decisions and most likely to need such information.

(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR, the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulations, while helping to maintain high standards of investor protection.

Dated: February 15, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4237 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35378; File No. SR–DTC–95–02]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Concerning Procedures Relating to Rule 17Ad–16 and Order Designating The Depository Trust Company as the Approved Qualified Registered Securities Depository

February 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 13, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is

[20] Investment Company Act Release No. 20472 (Aug. 11, 1994) (59 FR 42187) (proposing amendments to Rule 6–07 of Regulation S–X).

[21] Investment Company Act Release No. 20614 (Oct. 13, 1994) (59 FR 52689).

[22] Investment Advisers Act Release No. 1406 (March 16, 1994) (59 FR 13464).

[1] 15 U.S.C. 78s(b)(1) (1988).

publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC, seeks designation as the ''appropriate qualified registered securities depository'' to receive notices of transfer agent changes pursuant to the recently adopted Rule 17Ad–16 [2] of the Act. This proposed rule change also seeks approval of procedures that DTC has established to receive and transmit such notices to other registered securities depositories, participants, and others.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently adopted Rule 17Ad–16. That rule is designed to address the current and continuing problem of transfer delays due to unannounced transfer agent changes, including the change of a transfer agent for a particular issue and the change of the name or address of a transfer agent. The rule requires a registered transfer agent to send a notice to the ''appropriate qualified registered securities depository'' [3] when the assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address.

In order to eliminate uncertainty about where registered transfer agents should direct notices required by Rule 17Ad–16 and to reduce unnecessary costs and administrative burdens for transfer agents and registered securities depositories, DTC hereby respectfully requests designation as the ''appropriate qualified registered securities depository'' in order to be the sole recipient for all such notices sent by transfer agents pursuant to the rule.[4]

DTC has established procedures for providing copies of each such notice received to the other registered securities depositories and to participants and others. Generally, DTC will forward such notices to the Midwest Securities Depository Trust Company (''MSTC'') and the Philadelphia Depository Trust Company (''Philadep'') by facsimile transmission no later than the business day following DTC's receipt of such notice from the transfer agent. DTC will notify its participants and other interested parties through DTC's Legal Notice System (''LENS'') [5] no later than the business day following DTC's receipt of such notice from the transfer agent.

The proposed rule change is consistent with the requirements of Section 17A of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions as well as the timely transfer of securities certificates resulting in greater number of securities being immobilized promptly.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes DTC's proposed rule change is consistent with the requirements of the Act, particularly Section 17A of the Act, and the rules and regulations thereunder applicable to registered securities depositories. The proposed rule change will allow DTC to comply with Commission Rule 17Ad–16 which requires registered securities depository to provide their participants with notices received from a transfer agent, directly or through the appropriate qualified registered securities depository, when the transfer agent is terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. Rule 17Ad–16 became effective on February 6, 1995. DTC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the day of publication of notice of the filing in the **Federal Register** because accelerated approval will permit DTC to comply with the requirements of Rule 17Ad–16. The Commission finds good cause for so approving the proposed rule change on an accelerated basis.

With this order, the Commission also is designating DTC as the appropriate qualified registered securities depository.[6] DTC is the largest holder of record among qualified registered securities depositories for the most issues.[7] Also, as previously stated, both MSTC and Philadep have agreed that DTC should be designated as the appropriate qualified registered securities depository.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views, and arguments concerning the foregoing. Persons making written submissions

[2] Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656.

[3] An ''appropriate qualified registered securities depository'' is defined by Rule 17Ad–16 to mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. A ''qualified registered securities depository'' is defined by Rule 17Ad–16 to mean a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives.

[4] DTC has consulted with both the Philadelphia Depository Trust Company (''Philadep'') and the Midwest Securities Trust Company (''MSTC'') regarding DTC's designation as the appropriate qualified registered securities depository. Both Philadep and MSTC have agreed, either orally or in writing, that DTC should be designated as the appropriate qualified registered securities depository. Letter from J. Keith Kessel, Compliance Officer, Philadep, to Walter Harris, Manager, DTC (December 19, 1994). Both of these depositories have filed with the Commission procedures for disseminating to their participants information on transfer agent changes received from DTC. File Nos. SR–MSTC–95–02 and SR–Philadep–95–01.

[5] LENS enables DTC Participants to choose from a menu on their Participant Terminal System screen certain notices received by DTC which they wish to order. The Securities and Exchange Commission issued an order approving DTC's LENS on June 12, 1991 (Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 [File No. SR–DTC–91–08]).

[6] The Commission delegated to the Director of the Division of Market Regulation authority to designate by order the appropriate qualified registered securities depository. Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63565; 17 CFR 200.30–3(a)(56) (1994).

[7] DTC held securities on behalf of participants that equaled $7.5 trillion and 98.8% of the total market value of securities held in total by the three registered securities depositories that handle corporate securities. DTC 1993 Annual Report at 5.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Avenue, 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 Room, 450 Fifth Avenue, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principle office of DTC. All submissions should refer to the File No. SR–DTC–95–02 and should be submitted by March 15, 1995.

It is hereby ordered, Pursuant to Section 19(b)(2) that the proposed rule change (File No. SR–DTC–95–02) be, and hereby is approved. *It is further ordered*, pursuant to delegated authority that DTC is designated the appropriate qualified registered securities depository.[8]

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4277 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35380; File No. SR–MSTC–95–2]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Modifications of Procedures Implementing Rule 17Ad–16

February 15, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on January 24, 1995, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

MSTC, a ''qualified registered securities depository,''[2] as that term is defined in Rule 17Ad–16[3] under the Act, proposes to adopt procedures to maintain, update, and provide appropriate access to the information it receives pursuant to Commission Rule 17Ad–16. MSTC requests that the Commission designate The Depository Trust Company (''DTC'') as the ''appropriate qualified registered securities depository''[4] authorized to receive Rule 17Ad–16 notices on behalf of MSTC.

To ensure that Rule 17Ad–16 notices are timely disseminated, DTC and MSTC have agreed that all such notices will be forwarded by DTC to MSTC via facsimile transmission on a daily basis. MSTC proposes to maintain the Rule 17Ad–16 notices received from DTC for at least two years with the first six months being in an easily accessible place on MSTC's premises.

MSTC proposes to maintain conformity with Rule 17Ad–16 by making all material information contained in any Rule 17Ad–16 notice that MSTC receives from DTC available to its participants. This will be accomplished by updating MSTC's security account masterfile on a daily basis. Upon electronic inquiry by a participant, the security account masterfile will provide the participant with on-line information about a security, including the transfer agent's name and address.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

On December 1, 1994, the Commission adopted Rule 17Ad–16.[5] Among other things, the rule requires a transfer agent to file a notice with the appropriate qualified registered securities depository if the transfer agent ceases to perform transfer agent services or assumes transfer agent services on behalf of an issuer or changes its name or address. The rule also requires the appropriate qualified registered securities depository to forward those notices to all qualified registered securities depositories, that in turn must notify their participants of such transfer agent changes. Because MSTC has agreed that DTC should be the appropriate qualified registered securities depository, transfer agents will send these notices to DTC. DTC then will forward a copy of these notices to all qualified registered securities depositories.

MSTC will provide its members on-line access to the information in the notices by updating MSTC's security account masterfile on a daily basis. The purpose of this proposed rule change is to adopt procedures to implement and assure compliance with Rule 17Ad–16. MSTC states that the proposed rule change is consistent with Sections 17A(b)(3) (A) and (F) of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

MSTC neither solicited nor received written comments on the proposed rule change.

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[8] 17 CFR 200.30–3(a)(56) (1994).

[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Rule 17Ad–16 defines a ''qualified registered securities depository'' as a clearing agency registered under Section 17A of the Act that performs clearing agency functions and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to this section.

[3] 17 CFR § 240.17Ad–16 (1994).

[4] Rule 17Ad–16 defines an ''appropriate qualified register securities depository'' as the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date.

[5] 17 CFR § 240.17Ad–16. See also Securities Exchange Act Release No. 35039 (December 1, 1994), 59 FR 63656 (release adopting Rule 17Ad–16).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes MSTC's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered transfer agents. The proposed rule change will allow MSTC to comply with Commission Rule 17Ad–16 which, among other things, require each qualified registered securities depository to provide its participants the notices it receives from transfer agents, directly or through the appropriate qualified registered security depository, when the transfer agent is terminating or assuming transfer agent services on behalf of an issuer or changing its name or address. Rule 17Ad–16 became effective on February 6, 1995.

MSTC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Accelerated approval will permit MSTC to comply immediately with the requirements of Rule 17Ad–16. Thereby, the Commission finds good cause for so approving the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the File No. SR–MSTC–95–02 and should be submitted by March 15, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) that the proposed rule change (File No. SR–MSTC–95–02) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4276 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35391; File No. SR–NASD–94–62, Amendment No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Limit Order Protection for Member-to-Member Limit Order Handling on Nasdaq

February 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend SR–NASD–94–62 relating to limit order protection for member-to-member limit order handling in the Nasdaq Stock Market. Currently, the NASD's Interpretation to the Rules of Fair Practice [1] makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. In this amendment to its proposed expansion of the Interpretation, the NASD is proposing to amend the Interpretation to clarify that the ''terms and conditions'' exception to the Interpretation applies only to limit orders from institutional accounts, whether such limit orders come from a firm's own customers or are member-to-member limit orders. The term ''institutional account'' is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language, including the language that was added in the original proposal, is italicized; language to be deleted is bracketed.

Limit Order Protection Interpretation to Article III, Section 1 of the NASD Rules of Fair Practice

To continue to ensure investor protection and enhance market quality, the NASD Board of Governors is issuing an Interpretation to the Rules of Fair Practice dealing with member firm treatment of [their] customer limit orders in Nasdaq securities. This Interpretation will require members acting as market makers to handle [their] customer limit orders with all due care so that market makers do not ''trade ahead'' of those limit orders. *Thus, members acting as market makers that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order, provided that, prior to September 1, 1995, this prohibition shall not apply to customer limit orders that a member firm receives from another member firm and that are greater than 1,000 shares. Such orders shall be protected from executions at prices that are superior but not equal to that of the limit order.* In the interests of investor protection, the NASD is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.

Interpretation

Article III, Section 1 of the Rules of Fair Practice states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

The Best Execution Interpretation states that: In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions. Failure to exercise such diligence shall constitute conduct inconsistent with just and equitable principles of trade in violation of Article III, Section 1 of the Rules of Fair Practice.

In accordance with Article VII, Section 1(a)(2) of the NASD By-Laws, the following interpretation under Article III, Section 1 of the Rules of Fair

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[6] 17 CFR 200.30–3(a)(12) (1994).

[1] *NASD Manual,* Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.07.

Practice has been approved by the Board.

A member firm that accepts and holds an unexecuted limit order from a customer *(whether its own customer or a customer of another member)* in a Nasdaq security and that continues to trade the subject security for its own market-making account at prices that would satisfy the customer's limit order, without executing that limit order [under the specific terms and conditions by which the order was accepted by the firm], shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice, *provided that, until September 1, 1995, customer limit orders in excess of 1,000 shares received from another member firm shall be protected from the market maker's executions at prices that are superior but not equal to the limit order, and provided further, that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice.* Nothing in this section, however, requires members to accept limit orders from *any* customer[s].

By rescinding the safe harbor position and adopting this Interpretation of the Rules of Fair Practice, the NASD Board wishes to emphasize that members may not trade ahead of customer limit orders in their market-making capacity even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. The NASD believes that, pursuant to Article III, Section 1 of the Rules of Fair Practice, members accepting and holding unexecuted customer limit orders owe certain duties to their customers *and the customers of other member firms* that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which *institutional account* customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firms' market making capacity does not occur. For purposes of this Interpretation, a member that controls or is controlled by another member shall be considered a single entity so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity and the market making unit may not trade ahead of that customer's limit order.

The Board also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member's market making capacity or sent to another member for execution. As set out above, the best execution Interpretation requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. The NASD emphasizes that the order entry firms should continue to routinely monitor the handling of their customers' limit orders regarding the quality of the execution received.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment to the proposed rule change is to clarify that the Interpretation's ''terms and conditions'' exception to the protection of customer limit orders, whether the order is from a member's own customer or is a customer limit order sent to it for execution from another member (so-called ''member-to-member'' limit orders), is intended to apply only to limit orders from institutional accounts as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. The background and rationale for this amendment to the proposed rule change are discussed below.

On December 23, 1994, the Commission published for comment the NASD's proposed rule to expand the scope of limit order protection beyond that presently afforded by member firms to their customers in the Nasdaq Stock Market.[2] The NASD'S current Interpretation to the Rules of Fair Practice makes it a violation of just and equitable principles of trade for a member firm to trade ahead of its own customer's limit orders. The proposal before the Commission now would extend this protection to limit orders from a customer of a firm that sends that customer's limit order to another member for execution (so-called ''member-to-member'' limit orders). In addition, the proposal has a phase-in period until September 1, 1995, in which a firm receiving a member-to-member limit order of greater than 1,000 shares would be prohibited from trading for its own account at prices that are superior but not equal to the limit order price. The NASD's proposal also maintained language from the existing Interpretation regarding the member's ability to negotiate with any customer specific terms and conditions regarding its acceptance of limit orders, provided that the member makes these conditions clear to the customer. It is that language that this amendment is intended to affect.

The NASD believes that it is necessary to clarify that the terms and conditions exception to the handling of limit orders is intended to apply only to customer orders from institutional accounts as that term is defined in Article III, Section 21(c)(4) of the Rules of Fair Practice. Using that definition, a firm could negotiate limit order terms and conditions if the order came from:

- Banks, savings and loan associations, insurance companies, or registered investment companies;
- Investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and
- Any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

Accordingly, under the amended language, a member firm that accepts a limit order from a person or entity that does not fall within the definition of institutional account may not initiate the negotiation of any terms and conditions on the acceptance of that limit order. On the other hand, if the account placing the limit order meets the terms of the definition of institutional account, the firm may negotiate special terms and conditions with the customer of that account, or its representative, that permit the firm to trade ahead of or at the same price as the limit order. The amended Interpretation would apply to limit orders placed by the firm's own customers and member-to-member limit orders.

The NASD believes that this approach should minimize a retail customer's potential for confusion regarding the acceptance of a limit order that, under the existing Interpretation, could have

[2] Securities Exchange Act Release No. 35122 (Dec. 20, 1994), 59 FR 66389 (Dec. 23, 1994).

qualified the protection of the limit order rule's scope. At the same time, the amendment accurately reflects the ordinary framework in which firms and institutions typically negotiate the conditions under which an institution's limit order is to be handled. For example, in its approval of the original NASD Interpretation regarding the handling of customer limit orders,[3] the Commission specifically indicated its view that the terms and conditions language of the original NASD Interpretation was included to permit special treatment for institutional customer limit orders. In addition, in its own proposal regarding customer limit order protection for Nasdaq National Market securities, proposed Rule 15c5–1,[4] the Commission solicited comment on the ''terms and conditions'' provisions in its rule, which would allow the parties to a trade to set special conditions to allow a market maker to employ an appropriate strategy in filling an institutional customer's order without violating the proposed rule. Of course, the clarification of the Interpretation continues to permit a member to establish with its customers or the order entry firm commissioner or commission equivalents regarding the handling of a limit order, provided that the member makes these charges clear to the customer. In this connection, the NASD notes that Nasdaq market makers are free to negotiate additional compensation from order routing firms to the extent that such compensation is economically and competitively justified. Similarly, the Interpretation continues in place the understanding that nothing in the Interpretation would obligate a market maker to accept limit orders from any or all customers or member firms.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act in that these proposed changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in these securities, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Accordingly, while the NASD will monitor carefully for any adverse competitive effects of the Interpretation, it believes that any adverse effects are far outweighed by the enhanced execution opportunities provided public investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–94–62, Amendment No. 1 and should be submitted by March 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4358 Filed 2–16–95; 5:00 pm]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[4] *See* Securities Exchange Act Release No. 34753 (Sept. 29, 1994), 59 FR 50866 (Oct. 6, 1994).

[Release No. 34–35376; File No. SR–Phlx–095–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Five Year Long-Term Index Options

February 14, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 73s(b)(1), notice is hereby given that on February 8, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend its Rule 1101A to permit the listing of index option series with up to 60 months (five years) until expiration. Currently, Rule 1101A permits ''long-term'' options up to 36 months until expiration.[1] The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] See Rule 1101A(b)(iii).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory for, the Proposed Rule Change

The purpose of the proposed rule change is to provide investors with the ability to trade additional long-term options by permitting the listing of index options with up to 60 months until expiration. The Exchange represents that the proposed five year long-term options are in response to increasing investor interest in longer-term instruments. In the Exchange's opinion, such instruments will enable investors to trade based on long-term projections, providing added flexibility and trading opportunities in index options trading. The proposed amendment to Rule 1101A will permit five-year long-term options in all of the index options traded on the Phlx, both market (*i.e.*, broad-based indexes) and industry (*i.e.*, narrow-based indexes).

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market, by providing additional trading opportunities for investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–11 and should be submitted by March 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4275 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20898; 811–8112]

Transamerica Tax-Free Trust; Notice of Application

February 14, 1995.

AGENCY: Securities and Exchange Commission (''SEC'')..

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Transamerica Tax-Free Funds Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATON: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on January 18, 1995.

HEARING ON NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 13, 1995, 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, N.W., Washington, D.C. 20549. Applicants, 1000 Louisiana Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, 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 Representatives

1. Applicant is an open-end, diversified investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On October 29, 1993, Applicant registered under the Act and filed its registration statement under the Securities Act of 1933 (the ''1933 Act'').

2. In December 1994, the Adviser to the applicant determined market conditions for establishment municipal funds of the applicant changed so as to make registration undesirable and requested withdrawal of the registration statement. On April 21, 1994, the applicant received from the Commission an order withdrawing its registration statement pursuant to Rule 477 of the 1933 Act. Accordingly, applicant has not issued or offered any securities.

3. Applicant has no shareholders, liabilities or assets Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4236 Filed 2–21–95; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: SBA Grants Management Reporting and Recordkeeping Requirements.

Form No.: SBA Forms 1222 and 1224.

Frequency: On Occasion.

Description of Respondents: SBA Grant Applicants and Recipients.

Annual Responses: 1,480.

Annual Burden: 118,920.

Dated: February 16, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–4230 Filed 2–21–95; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Settlement Sheet.

Form No.: SBA Form 1050.

Frequency: On Occasion.

Description of Respondents: SBA Borrowers.

Annual Responses: 17,000.

Annual Burden: 12,750.

Dated: February 16, 1995.

Cleo Verbillis,

Chief, Administrative, Information Branch.

[FR Doc. 95–4229 Filed 2–21–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Joint Application of NAVCOM Aviation, Inc., Ultrair, Inc., and Paradise Airways, Inc., for Transfer of Certificate Authority Under Section 41105

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 95–2–31) docket 49813.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Paradise Airways, Inc., fit to engage in interstate scheduled air transportation of persons, property, and mail, (2) transfer to it the section 41102 certificate held by Ultrair, Inc., and (3) cancel the interstate and foreign charter certificate authority held by Ultrair, Inc.

DATES: Persons wishing to file objections should do so no later than February 27, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket 49813 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, (202) 366–2337.

Dated: February 14, 1995

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–4263 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applicants described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo Vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before March 24, 1995.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11385–N	AirTime Aviation, Houston, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize the transportation by commerce of Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Modes 4, 5).
11386–N	Beaver Island Boat Co., Charlevoix, MI ..	49 CFR 172.101(10), Note (k)(4)	To authorize the transportation in commerce of Division 2.1 material on passenger ferries in DOT-Specification 4BA 240 cylinders. (Mode 3).
11388–N	Nalco Chemical Co., Naperville, IL	49 CFR 173.243, appendix B to subpart B of 49 CFR, part 107.	To authorize the transportation in commerce of certain dual hazard liquids that are both flammable and corrosive in DOT-Specification 57 stainless steel portable tanks. (Modes 1, 2, 3).
11390–N	D&D Air Transport, Inc., Houston, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b) part 107, appendix B.	To authorize the transportation in commerce of Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Mode 4).
11391–N	DHE (Fabrication & Machining), Vereeniging 1930, SA.	49 CFR 178.245–1(b)	To authorize the transportation of non DOT specification portable tanks similar to DOT Specification 51, except they are equipped with openings in various locations on the same end for use in transporting various hazardous materials classed as Division 2.1, 2.2 and 2.3 (Modes 1, 2, 3).
11393–N	Hoechst Celanese Corp., Charlotte, NC .	49 CFR 177.834(i)(3)	To authorize the loading and unloading of dimethyl Terephthalate, Class 9, from cargo tank without the physical presence of an unloader. (Mode 1).
11394–N	Amtrol, West Warwick, RI	49 CFR 178.51	To authorize the manufacture, mark and sale of non-DOT specification cylinders of stainless steel comparable to a DOT Specification 4BA. (Mode 1).
11395–N	Dart Polymers, Inc., Leola, PA	49 CFR 173.35	To authorize the transportation in commerce of polystrene beads, expandable, Class 9, in reusable fiberboard bulk boxes. (Modes 1, 2).
11396–N	Laidlaw Environmental Services, LaPorte, TX.	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of certain flammable, non-flammable gases, Division 2.1 and 2.2 in aerosol containers overpacked in strong outside packages with no weight limitations. (Mode 1).
11397–N	Speer Products Inc., Memphis, TN	49 CFR 173.306(a)(3), 173.306(h)	To authorize the transportation in commerce of difluoroethane aerosolsand mixtures, classed as Division 2.2 in DOT-Specification 2Q containers overpacked in strong outside packing without required labeling, placarding and shipping papers. (Mode 1).
11401–N	Hewlett Packard Co., Santa Clara, CA ...	49 CFR 172, 173.124, 173.125, 174, 175, 176, 177.	To authorize the transportation in commerce of unpowered cesium devices classed as Division 4.3 consisting of a stainless-steel cylinder, overpacked in strong fiberboard boxes. (Modes 1, 2, 3, 5).
11403–N	Telford Aviation Inc., Bangor, ME	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), part 107, appendix B.	To authorize the transportation in commerce of Division 1.1B explosives that are not permitted for shipment by air or are in quantities greater than those authorized. (Mode 4).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11405–N	Hoechst Celanese Corp., Charlotte, NC .	49 CFR 100–199	To authorize the transportation in commerce of small quantities of a self-hearing material as essentially non-regulated. (Modes 1, 2, 3, 4, 5).
11406–N	Conference of Radiation Control Program Directors, Pittsburgh, PA.	49 CFR 173.403	To authorize the transportation in commerce of trash/debris containing unknown radionuclides to be transported in conveyances with low external radiation levels if conditions are approved by State radiation protection officials. (Modes 1, 2).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–4266 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–60–M

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 9.

ADDRESS COMMENTS TO: Docket Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
6922–M	Halocarbon Products Corp., N. Augusta, SC (See Footnote 1)	6922
8915–M	BOC Gases, Murray Hill, NJ (See Footnote 2)	8915
9164–M	Fabricated Metals, Inc., San Leandro, CA (See Footnote 3)	9164
10463–M	Allied Universal Corp., Miami, FL (See Footnote 4)	10463
10970–M	Luxfer USA Limited, Placentia, CA (See Footnote 5)	10970
11355–M	Button Transportation, Inc., Dixon, CA (See Footnote 6)	11355

[1] To modify exemption to provide for solid plugs as a replacement for relief devices for DOT-Specification 106A500–X multi-tank car tank, for shipment of Trifluroacetyl Chloride, Division 2.3, PIH, Zone B.

[2] To modify exemption to authorize transportation of silane, Division 2.1, in DOT-Specification 3AL cylinders.

[3] To modify exemption to increase the capacity to 379 gallons for non-DOT specification steel portable tanks, with removable head, for shipment of various Class 3 material.

[4] To modify exemption to provide for transportation of hypochlorite solutions in non-DOT specification 1-gallon polyethylene bottles overpacked in non-DOT specification polyethylene drums without lids.

[5] To modify exemption to increase water capacity to 200 pounds and the service pressure to 5000 psi for aluminum-lined composite cylinders meeting the design and qualification requirements of DOT FRP–1 standard for use in transporting various commodities classed as Division 2.1 and 2.2.

[6] To reissue exemption originally issued on an emergency basis for the transportation of liquefied petroleum gas (LPG), in DOT Specification MC–331 cargo tank motor vehicles manufactured from quenced and tempered steel which are coated on the inside with a cross linked epoxy-phenolic compound.

Application No.	Applicant	Parties to exemption
3549–P	EG&G Star City, Inc., Miamisburg, OH	3549
6743–P	L.P. Rock Corp., Parsippany, NJ	6743
8009–P	Texas Gas Transmission Corporation, Owensboro, KY	8009
8230–P	Olin Corporation, Stamford, CT	8230

Application No.	Applicant	Parties to exemption
8554–P	L.P. Rock Corp., Parsippany, NJ	8554
8845–P	Hitwell Surveys, Inc., Fort Worth, TX	8845
9275–P	Parlux Fragrances, Inc., Pompano Beach, FL	9275
9617–P	Cherokee Products, Inc., Jefferson City, TN	9617
10717–P	Procor Limited, East Chicago, IN	10717
10897–P	ZestoTherm, Inc., Cincinnati, OH (See Footnote 1)	10897
10933–P	Ochoa Environmental Services, San Juan, PR	10933
11000–P	E.I. DuPont de Nemours & Company, Inc., Wilmington, DE	11000
11043–P	Franklin Environmental Services, Inc., Wrentham, MA	11043
11156–P	Maynes Explosives Company, Lee's Summit, MO	11156
11156–P	Dyno New England, Inc., Middlefield, CT	11156
11189–P	Allied Signal Safety Restraint Systems, Knoxville, TN	11189

[1] To authorize party status and modify exemption to provide for transport vehicles and freight containers transporting hazardous materials under terms of the exemption be excepted from Division 4.3 placarding requirements when the gross weight of packages in the vehicle or freight container is less than 220 pounds.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 14, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 95–4265 Filed 2–21–95; 8:45 am]

BILLING CODE 4910–60–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1–6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is hereby published for the Series 20 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public. The publication of this notice will be less than 15 days prior to the first meeting of the series due to a scheduling change.

DATES: The 1995 meetings are scheduled as follows: 1. March 2, 9 a.m. to 12:30 p.m., Albuquerque, New Mexico, Region 5 Advisory Board.

2. March 22, 9 a.m. to 12:30 p.m., Charlotte, North Carolina, Region 2 Advisory Board.

3. March 24, 9 a.m. to 12:30 p.m., Boston, Massachusetts, Region 1 Advisory Board.

4. March 29, 9 a.m. to 12:30 p.m., Austin, Texas, Region 4, Advisory Board.

5. April 4, 9 a.m. to 12:30 a.m., Milwaukee, Wisconsin, Region 3 Advisory Board.

6. April 7, 9 a.m. to 12:30 p.m., San Francisco, California, Region 6 Advisory Board.

ADDRESSES: The meetings will be held at the following locations: 1. Albuquerque, New Mexico—Doubletree Albuquerque, 201 Marquette NW.

2. Charlotte, North Carolina—Charlotte–Mecklenburg Government Plaza, 600 East 4th Street.

3. Boston, Massachusetts—Boston Back Bay Hilton, 40 Dalton Street.

4. Austin, Texas—Stouffer Austin Hotel, 9721 Arboretum Boulevard.

5. Milwaukee, Wisconsin—Hyatt Regency Milwaukee, 333 West Kilbourn Avenue.

6. San Francisco, California—Parc Fifty-five Hotel, 55 Cyril Magnin.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose

The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC-owned real property assets.

Agenda

The Board will address issues surrounding the RTC Environmental and Significant Property Disposition Program. Topics to be addressed at the six meetings will include the identification and number of RTC assets containing special environmental resources, assets sold to conservation or historic preservation agencies, assets covered by the Coastal Barrier Improvement Act and properties subject to environmental hazard remediation. The Boards also will hear from the vice presidents of the RTC's regional offices as well as from witnesses testifying on specific agenda topics.

Statements

Interested persons may submit to an Advisory Board written statements, data, information or views on the issues pending before the Board prior to or at the meeting. The meetings will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: February 16, 1995.

Jill Nevius,

Committee Management Officer, Officer of Advisory Board Affairs.

[FR Doc. 95–4260 Filed 2–16–95; 10:30 am]

BILLING CODE 2221–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 14, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0768
Regulation ID Number: EE–178–78 Final
Type of Review: Extension
Title: Employers' Qualified Educational Assistance Programs T. D. 7898
Description: Respondents include employers who maintain education assistance programs for their employees. Information verifies that programs are qualified and that employees may exclude educational assistance from their gross incomes.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 200
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 615 hours

OMB Number: 1545–1161
Regulation ID Number: CO–8–90 Final
Type of Review: Extension
Title: Consolidated Return Regulations—Deferred Gain or Loss (T.D. 8478)
Description: This regulation requires a statement to be attached to a consolidated federal income tax return by those groups which entered into certain intercompany transactions before the effective date of the temporary regulations (March 15, 1990), and that the treatment of these transactions will be different than that of transactions entered into after March 15, 1990.
Respondents: Business or other for-profit
Estimated Number of Respondents: 2,500
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: Other (one time only)
Estimated Total Reporting Burden: 5,000 hours

OMB Number: 1545–1219
Form Number: IRS Form 8038–T
Type of Review: Revision
Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate
Description: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.
Respondents: State, Local or Tribal Government
Estimated Number of Respondents/ Recordkeepers: 2,500
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hr., 37 min.
Learning about the law or the form.	3 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS.	3 hr., 46 min.

Frequency of Response: Other
Estimated Total Reporting/ Recordkeeping Burden: 60,925 hours

OMB Number: 1545–1300
Regulation ID Number: FI–46–89 NPRM
Type of Review: Extension
Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions
Description: Recipients of Federal financial assistance (''FFA'') must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.
Respondents: Business or other for-profit, Federal Government
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 95–4239 Filed 2–21–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 14, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0096
Form Number: PD F 1993
Type of Review: Extension
Title: Reinvestment Application
Description: This form is used to request that proceeds of matured Series H savings bonds be reinvested in Series HH savings bonds.
Respondents: Individuals or households
Estimated Number of Respondents: 270,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 67,500 hours
Clearance Officer: Vicki S. Ott (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–4241 Filed 2–21–95; 8:45 am]

BILLING CODE 4810–40–P

Public Information Collection Requirements Submitted to OMB for Review

February 13, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to insure that the form described below goes to print before February 28, 1995 for immediate distribution to and use by the affected public, the Department of the Treasury, on behalf of the Bureau of Alcohol, Tobacco and Firearms, is requesting Office of Management and Budget (OMB) review and approval by February

21, 1995. Copies of the form may be obtained by contacting the bureau clearance officer listed below.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0520
Form Number: ATF F 5300.35
Type of Review: Extension
Title: Statement of Intent to Obtain a Handgun(s)
Description: This form is used to establish the eligibility of the buyer and to determine if the handgun sale is legal, prior to the actual delivery of the handgun. It becomes part of the dealer's records and is used by the Office of Enforcement in compliance inspections and criminal investigations to trace firearms or to confirm criminal activity of persons who have violated.
Respondents: Individuals or households, Business or other for-profit, Federal Government
Estimated Number of Respondents: 8,000,000
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,293,883 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–4240 Filed 2–21–95; 8:45 am]

BILLING CODE 4810–31–P

INTERAGENCY COMMITTEE ON WOMEN'S BUSINESS ENTERPRISE

Notice of Meeting

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 103–403 as amended, the Interagency Committee on Women's Business Enterprise announces forthcoming Committee Meetings. The meeting will cover action items to be taken by the Interagency Committee on Women's Business Enterprise in Fiscal Year 1995 including but not limited to increasing procurement opportunities and access to capital for women business owners.

Date: February 24, 1994 from 8:30 am to 1:30 pm.

Address: White House—Old Executive Office Building, rooms 472 and 474.

Status: Open to the public.

Contact: For further information contact Betsy Myers, Associate Administrator, SBA Office of Women's Business Ownership, 409 Third Street, SW., suite 6250, Washington, DC 20416, (202) 205–6673.

Betsy Myers,

Associate Administrator SBA, Office of Women's Business Ownership, and Vice Chairperson of the Interagency Committee.

[FR Doc. 95–4273 Filed 2–21–95; 8:45 am]

BILLING CODE 8025–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 35

Wednesday, February 22, 1995

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVES SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 27, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 17, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–4475 Filed 2–17–95; 3:11 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 20, 27, March 6, and 13, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 20

There are no meetings scheduled for the Week of February 20.

Week of February 27—Tentative

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301–415–5972)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Curators of the University of Missouri—Appeal of LBP–91–31 and LBP–91–34 (Tentative)
(Contact: Roland Frye, 301–415–3505)
2:00 p.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301–415–7266)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 13—Tentative

Tuesday, March 14

10:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301–415–7322)
3:30 p.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) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: February 17, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–4461 Filed 2–17–95; 3:11 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 60, No. 35
Wednesday, February 22, 1995

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.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket Nos. 92-115, 94-46 and 93-116; FCC 94-201]

Public Mobile Services

Correction

In rule document 94–27415 beginning on page 59502 in the issue of Thursday, November 17, 1994, make the following corrections:

§22.105 [Corrected]

On page 59512, in §22.105, Table B-1 should read as follows:

TABLE B–1.—STANDARD FORMS FOR THE PUBLIC MOBILE SERVICES

Purpose of filing	Form No.	Title of form
• application for new or modified station • major amendment to pending application • application for partial assignment of authorization.	401	Application for Mobile Radio Service Authorization.
• application for renewal of authorization	405	Application for Renewal of Station License.
• application for airborne mobile authorization	409	Application for Airborne Mobile Radiotelephone Authorization.
• application for assignment of authorization	430	Licensee Qualification Report.
• notification of completion of construction • notification of minor modification of station.	489	Notification of Commencement of Service or of Additional or Modified Facilities.
• application for assignment of authorization • application for consent to transfer of control.	490	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee.

§22.361 [Corrected]

On page 59528, in §22.361, in the first column, table C-2 should read as follows:

TABLE C–2.—TECHNICAL REQUIREMENTS FOR DIRECTIONAL ANTENNAS

Frequency range	Maximum beamwidth	Suppression
35 to 512 MHz	80°	10 dB
512 to 1500 MHz	20°	13 dB
1500 to 2500 MHz	12°	13 dB

§22.561 [Corrected]

On page 59537, in §22.561, in the second column, the table should read as follows:

* * * * *

Base	Mobile	Base	Mobile
VHF Channels			
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07
UHF Channels			
454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

§22.591 [Corrected]

On page 59541, in §22591, in the first column the table should read as follows:

* * * * *

VHF Channels			
72.02	72.36	72.80	75.66
72.04	72.38	72.82	75.68
72.06	72.40	72.84	75.70
72.08	72.42	72.86	75.72
72.10	72.46	72.88	75.74
72.12	72.50	72.90	75.76
72.14	72.54	72.92	75.78
72.16	72.58	72.94	75.80
72.18	72.62	72.96	75.82
72.20	72.64	72.98	75.84
72.22	72.66	75.42	75.86
72.24	72.68	75.46	75.88
72.26	72.70	75.50	75.90
72.28	72.72	75.54	75.92
72.30	72.74	75.58	75.94
72.32	72.76	75.62	75.96
72.34	72.78	75.64	75.98
72.10	72.46	72.88	75.74
72.12	72.50	72.90	75.76
72.14	72.54	72.92	75.78
72.16	72.58	72.94	75.80
72.18	72.62	72.96	75.82

72.20	72.64	72.98	75.84
72.22	72.66	75.42	75.86
72.24	72.68	75.46	75.88
72.26	72.70	75.50	75.90
72.28	72.72	75.54	75.92
72.30	72.74	75.58	75.94
72.32	72.76	75.62	75.96
72.34	72.78	75.64	75.98

UHF Channels—State of Hawaii

488.250	491.250	489.750	492.750
488.750	491.750	490.250	493.250
489.250	492.250	490.750	493.750

MICROWAVE CHANNELS

[Bandwidth individually assigned]

2110.1	2160.1
2110.2	2160.2
2110.3	2160.3
2129.9	2179.9

* * * * *

§22.621 [Corrected]

On page 59542, in the second column, in §22.621, the table should read as follows:

* * * * *

Public Mobile Pool

(25 kHz bandwidth)

928.8625	959.8625	928.9375	959.9375
928.8875	959.8875	928.9625	959.9625
928.9125	959.9125	928.9875	959.9875

(12.5 kHz bandwidth)

928.85625	959.85625	928.93125 ...	959.93125
928.86875	959.85625	928.94375 ...	959.94375
928.88125	959.88125	928.95625 ...	959.95625
928.89375	959.89375	928.96875 ...	959.96875
928.90625	959.90625	928.98125 ...	959.98125
928.91875	959.91875	928.99375 ...	959.99375

Private Radio General Access Pool

(25 kHz bandwidth)

956.2625	956.3125	956.3625	956.4125
956.2875	956.3375	956.3875	956.4375
928.0125	952.0125	928.1875	952.1875
928.0375	952.0375	928.2125	952.2125
928.0625	952.0625	928.2375	952.2375
928.0875	952.0875	928.2625	952.2625
928.1125	952.1125	928.2875	952.2875
928.1375	952.1375	928.3125	952.3125
928.1625	952.1625	928.3375	952.3375

(12.5 kHz bandwidth)

956.25625	956.30625	956.35625 ...	956.40625
956.26875	956.31875	956.36875 ...	956.41875
956.28125	956.33125	956.38125 ...	956.43125
956.29375	956.34375	956.39375 ...	956.44375
928.00625	952.00625	928.18125 ...	952.18125
928.01875	952.01875	928.19375 ...	952.19375
928.03125	952.03125	928.20625 ...	952.20625
928.04375	952.04375	928.21875 ...	952.21875
928.05625	952.05625	928.23125 ...	952.23125
928.06875	952.06875	928.24375 ...	952.24375
928.08125	952.08125	928.25625 ...	952.25625
928.09375	952.09375	928.26875 ...	952.26875
928.10625	952.10625	928.28125 ...	952.28125
928.11875	952.11875	928.29375 ...	952.29375
928.13125	952.13125	928.30625 ...	952.30625
928.14375	952.14375	928.31875 ...	952.31875
928.15625	952.15625	928.33125 ...	952.33125
928.16875	952.16875	928.34375 ...	952.34375

Private Radio Power Pool

(25 kHz bandwidth)

928.3625	952.3625	928.6125	952.6125
928.3875	952.3875	928.6375	952.6375
928.4125	952.4125	928.6625	952.6625
928.4375	952.4375	928.6875	952.6875
928.4625	952.4625	928.7125	952.7125
928.4875	952.4875	928.7375	952.7375
928.5125	952.5125	928.7625	952.7625
928.5375	952.5375	928.7875	952.7875
928.5625	952.5625	928.8125	952.8125
928.5875	952.5875	928.8375	952.8375

(12.5 kHz bandwidth)

928.35625	952.35625	928.60625 ...	952.60625
928.36875	952.36875	928.61875 ...	952.61875
928.38125	952.38125	928.63125 ...	952.63125
928.39375	952.39375	928.64375 ...	952.64375
928.40625	952.40625	928.65625 ...	952.65625
928.41875	952.41875	928.66875 ...	952.66875
928.43125	952.43125	928.68125 ...	952.68125
928.44375	952.44375	928.69375 ...	952.69375
928.45625	952.45625	928.70625 ...	952.70625
928.46875	952.46875	928.71875 ...	952.71875
928.48125	952.48125	928.73125 ...	952.73125
928.49375	952.49375	928.74375 ...	952.74375
928.50625	952.50625	928.75625 ...	952.75625
928.51875	952.51875	928.76875 ...	952.76875
928.53125	952.53125	928.78125 ...	952.78125
928.54375	952.54375	928.79375 ...	952.79375
928.55625	952.55625	928.80625 ...	952.80625
928.56875	952.56875	928.81875 ...	952.81875
928.58125	952.58125	928.83125 ...	952.83125
928.59375	952.59375	928.84375 ...	952.84375

Public, Private, Government Shared Pool

(12.5 kHz bandwidth)

932.00625	941.00625	932.25625 ...	941.25625
932.01875	941.01875	932.26875 ...	941.26875
932.03125	941.03125	932.28125 ...	941.28125
932.04375	941.04375	932.29375 ...	941.29375
932.05625	941.05625	932.30625 ...	941.30625
932.06875	941.06875	932.31875 ...	941.31875
932.08125	941.08125	932.33125 ...	941.33125
932.09375	941.09375	932.34375 ...	941.34375
932.10625	941.10625	932.35625 ...	941.35625
932.11875	941.11875	932.36875 ...	941.36875
932.13125	941.13125	932.38125 ...	941.38125
932.14375	941.14375	932.39375 ...	941.39375
932.15625	941.15625	932.40625 ...	941.40625
932.16875	941.16875	932.41875 ...	941.41875
932.18125	941.18125	932.43125 ...	941.43125
932.19375	941.19375	932.44375 ...	941.44375
932.20625	941.20625	932.45625 ...	941.45625
932.21875	941.21875	932.46875 ...	941.46875
932.23125	941.23125	932.48125 ...	941.48125
932.24375	941.24375	932.49375 ...	941.49375

UHF Channels in Specified Urban Areas

Boston

470.0125	473.0125	482.0125	485.0125
470.0375	473.0375	482.0375	485.0375
470.0625	473.0625	482.0625	485.0625
470.0875	473.0875	482.0875	485.0875
470.1125	473.1125	482.1125	485.1125
470.1375	473.1375	482.1375	485.1375
470.1625	473.1625	482.1625	485.1625
470.1875	473.1875	482.1875	485.1875
470.2125	473.2125	482.2125	485.2125
470.2375	473.2375	482.2375	485.2375
470.2625	473.2625	482.2625	485.2625
470.2875	473.2875	482.2875	485.2875

Chicago, Cleveland

470.0125	473.0125	476.0125	479.0125
470.0375	473.0375	476.0375	479.0375
470.0625	473.0625	476.0625	479.0625
470.0875	473.0875	476.0875	479.0875
470.1125	473.1125	476.1125	479.1125
470.1375	473.1375	476.1375	479.1375
470.1625	473.1625	476.1625	479.1625
470.1875	473.1875	476.1875	479.1875
470.2125	473.2125	476.2125	479.2125
470.2375	473.2375	476.2375	479.2375
470.2625	473.2625	476.2625	479.2625
470.2875	473.2875	476.2875	479.2875

New York-Northeastern New Jersey

470.0125	470.1625	476.0125	476.1625
470.0375	470.1875	476.0375	476.1875
470.0625	470.2125	476.0625	476.2125
470.0875	470.2375	476.0875	476.2375
470.1125	470.2625	476.1125	476.2625
470.1375	470.2875	476.1375	476.2875

Dallas-Forth Worth

482.0125	482.1625	485.0125	485.1625
482.0375	482.1875	485.0375	485.1875
482.0625	482.2125	485.0625	485.2125
482.0875	482.2375	485.0875	485.2375
482.1125	482.2625	485.1125	485.2625
482.1375	482.2875	485.1375	485.2875

Detroit

476.0125	479.0125	482.0125	485.0125
476.0375	479.0375	482.0375	485.0375
476.0625	479.0625	482.0625	485.0625
476.0875	479.0875	482.0875	485.0875
476.1125	479.1125	482.1125	485.1125
476.1375	479.1375	482.1375	485.1375
476.1625	479.1625	482.1625	485.1625
476.1875	479.1875	482.1875	485.1875
476.2125	479.2125	482.2125	485.2125
476.2375	479.2375	482.2375	485.2375
476.2625	479.2625	482.2625	485.2625
476.2875	479.2875	482.2875	485.2875

Houston

488.1625	491.1625	488.2375	491.2375
488.1875	491.1875	488.2625	491.2625
488.2125	491.2125	488.2875	491.2875

Los Angeles

470.0125	473.0125	506.0625	509.0625
470.0375	473.0375	506.0875	509.0875
506.0125	509.0125	506.1125	509.1125
506.0375	509.0375	.	

Miami

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

Philadelphia

500.0125	503.0125	506.0125	509.0125
500.0375	503.0375	506.0375	509.0375
500.0625	503.0625	506.0625	509.0625
500.0875	503.0875	506.0875	509.0875
500.1125	503.1125	506.1125	509.1125
500.1375	503.1375	506.1375	509.1375
500.1625	503.1625	506.1625	509.1625
500.1875	503.1875	506.1875	509.1875
500.2125	503.2125	506.2125	509.2125
500.2375	503.2375	506.2375	509.2375
500.2625	503.2625	506.2625	509.2625
500.2875	503.2875	506.2875	509.2875

Pittsburgh

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

San Francisco

482.0125	485.0125	488.0125	491.0125
482.0375	485.0375	488.0375	491.0375
482.0625	485.0625	488.0625	491.0625
482.0875	485.0875	488.0875	491.0875
482.1125	485.1125	488.1125	491.1125
482.1375	485.1375	488.1375	491.1375
482.1625	485.1625	488.1625	491.1625
482.1875	485.1875	488.1875	491.1875
482.2125	485.2125	488.2125	491.2125
482.2375	485.2375	488.2375	491.2375
482.2625	485.2625	488.2625	491.2625
482.2875	485.2875	488.2875	491.2875

Washington, DC

488.0125	491.0125	494.0125	497.0125
488.0375	491.0375	494.0375	497.0375
488.0625	491.0625	494.0625	497.0625
488.0875	491.0875	494.0875	497.0875
488.1125	491.1125	494.1125	497.1125
488.1375	491.1375	494.1375	497.1375
488.1625	491.1625	494.1625	497.1625
488.1875	491.1875	494.1875	497.1875
488.2125	491.2125	494.2125	497.2125
488.2375	491.2375	494.2375	497.2375
488.2625	491.2625	494.2625	497.2625
488.2875	491.2875	494.2875	497.2875

* * * * *

§22.627 [Corrected]

On page 59544, in the second column, in §22.627(b)(1)(i), the table should read as set forth below:

* * * * *

(i) The protected TV station locations are as follows:

Control transmitter frequency range	Protected TV station location		
470–476 MHz	Jacksonville, IL	39°45′52″	90°30′29″.
	Mt. Pleasant, MI	43°34′24″	84°46′21″.
	Oxford, OH	39°30′26″	84°44′09″.
	Washington, DC	38°57′17″	77°00′17″.
476–482 MHz	Champaign, IL	40°04′11″	87°54′45″.
	Madison, WI	43°03′01″	89°29′15″.
	Parkersburg, WV	39°20′50″	81°33′56″.
	Fort Wayne, IN	41°05′35″	85°10′42″.
	Lancaster, PA	40°15′45″	76°27′49″.
482–488 MHz	South Bend, IN	41°36′26″	86°27′48″.
488–494 MHz	Philadelphia, PA	40°02′30″	75°14′24″.
494–500 MHz			None.
500–506 MHz	Johnstown, PA	40°19′47″	78°53′45″.
506–512 MHz	Washington, DC	38°57′49″	77°06′18″.
	Waterbury, CT	41°31′02″	73°01′00″.

* * * * *

§22.651 [Corrected]

On page 59546, in the first column, in §22.651, the table should read as follows:

* * * * *

Houston

488.0125	491.0125	488.0875	491.0875
488.0375	491.0375	488.1125	491.1125
488.0625	491.0625	488.1375	491.1375

New York-Northern New Jersey

473.0125	479.0125	473.1625	479.1625
473.0375	479.0375	473.1875	479.1875
473.0625	479.0625	473.2125	479.2125
473.0875	479.0875	473.2375	479.2375
473.1125	479.1125	473.2625	479.2625
473.1375	479.1375	473.2875	479.2875

* * * * *

§22.725 [Corrected]

On page 59551, in the third column, in §22.725, on page 59551 the table should read as follows:

* * * * *

Central office	Rural subscriber	Central office	Rural subscriber
VHF Channels			
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07
UHF Channels			
454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

* * * * *

§22.757 [Corrected]

On page 59553, in the first column, in §22.757, the table should read as follows:

* * * * *

UHF CHANNELS—SHARED WITH PRIVATE RADIO SERVICES

Rural subscriber	Central office	Rural subscriber	Central office
816.2375	861.2375	816.1125	861.1125
817.2375	862.2375	817.1125	862.1125
818.2375	863.2375	818.1125	863.1125
819.2375	864.2375	819.1125	864.1125
820.2375	865.2375	820.1125	865.1125
816.2125	861.2125	816.0875	861.0875
817.2125	862.2125	817.0875	862.0875
818.2125	863.2125	818.0875	863.0875
819.2125	864.2125	819.0875	864.0875
820.2125	865.2125	820.0875	865.0875
816.1875	861.1875	816.0625	861.0625
817.1875	862.1875	817.0625	862.0625
818.1875	863.1875	818.0625	863.0625
819.1875	864.1875	819.0625	864.0625
820.1875	865.1875	820.0625	865.0625
816.1625	861.1625	816.0375	861.0375
817.1625	862.1625	817.0375	862.0375
818.1625	863.1625	818.0375	863.0375
819.1625	864.1625	819.0375	864.0375
820.1625	865.1625	820.0375	865.0375
816.1375	861.1375	816.0125	861.0125
817.1375	862.1375	817.0125	862.0125
818.1375	863.1375	818.0125	863.0125
819.1375	864.1375	819.0125	864.0125
820.1375	865.1375	820.0125	865.0125

* * * * *

§22.905 [Corrected]

On page 59561, in the first column, in §22.905, the table should read as follows:

* * * * *

Base	Mobile	Base	Mobile
CHANNEL BLOCK A			
416 communication channel pairs			
869.040	824.040	890.010	845.010
869.070	824.070	890.040	845.040
|	|	|	|
|	|	|	|
879.990	834.990	891.480	846.480
21 control channel pairs			
	834.390		879.390
	834.420		879.420
	|		|
	|		|
	834.990		879.990
CHANNEL BLOCK B			
416 communication channel pairs			
880.020	835.020	891.510	846.510
880.050	835.050	981.540	846.540
|	|	|	|
|	|	|	|
889.980	844.980	893.970	848.970
21 control channel pairs			
	835.020		880.020
	835.050		880.050
	|		|
	|		|
	835.920		880.620

* * * * *

§22.1007 [Corrected]

On page 59573, in the third column, in §22.1007, the tables should read as follows:

* * * * *

Central	Subscriber	Central	Subscriber
488.025	491.025	488.225	491.225
488.050	491.050	488.250	491.250
488.075	491.075	488.275	491.275
488.100	491.100	488.300	491.300
488.125	491.125	488.325	491.325
488.150	491.150	488.350	491.350
488.175	491.175	488.375	491.375
488.200	491.200	488.400	491.400

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

Central	Subscriber	Central	Subscriber
488.425	491.425	488.575	491.575
488.450	491.450	488.600	491.600
488.475	491.475	488.625	491.625
488.500	491.500	488.650	491.650
488.525	491.525	488.675	491.675
488.550	491.550	488.700	491.700

(3) These channels may be assigned for use by relay stations in systems where it would be impractical to provide offshore radiotelephone service without the use of relay stations.

Central	Subscriber	Central	Subscriber
488.725	491.725	488.775	491.775
488.750	491.750	488.800	491.800

(4) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency communications involving protection of life and property.

Central	Subscriber	Central	Subscriber
488.825	491.825	488.875	491.875
488.850	491.850	488.900	491.900

(5) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

Central	Subscriber
488.950	491.950

(6) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency shut-off remote control telemetry, environmental data acquisition and disseminations, or facsimile transmissions.

Central	Subscriber	Central	Subscriber
489.000	492.000	489.200	492.200
489.025	492.025	489.225	492.225
489.050	492.050	489.250	492.250
489.075	492.075	489.275	492.275
489.100	492.100	489.300	492.300
489.125	492.125	489.325	492.325
489.150	492.150	489.350	492.350
489.175	492.175	489.375	492.375

(7) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for private line service:

Central	Subscriber	Central	Subscriber
489.400	492.400	489.725	492.725
489.425	492.425	489.750	492.750
489.450	492.450	489.775	492.775
489.475	492.475	489.800	492.800
489.500	492.500	489.825	492.825
489.525	492.525	489.850	492.850
489.550	492.550	489.875	492.875
489.575	492.575	489.900	492.900
489.600	492.600	489.925	492.925
489.625	492.625	489.950	492.950
489.650	492.650	489.975	492.975
489.675	492.675	490.000	493.000
489.700	492.700		

* * * * *

(b) *Zone B—Southern Louisiana—Texas.* (1) The geographical area in Zone B is bounded as follows:

From longitude W.87°45′ on the East to longitude W.95°00′ on the West and from the 4.8 kilometer (3 mile) limit along the Gulf of Mexico shoreline on the North to the limit of the Outer Continental Shelf on the South.

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

Central	Subscriber	Central	Subscriber
485.025	482.025	486.025	483.025
485.050	482.050	486.050	483.050
485.075	482.075	486.075	483.075
485.100	482.100	486.100	483.100
485.125	482.125	486.125	483.125
485.150	482.150	485.150	483.150
485.175	482.175	486.175	483.175
485.200	482.200	486.200	483.200
485.225	482.225	486.225	483.225
485.250	482.250	486.250	483.250
485.275	482.275	486.275	483.275
485.300	482.300	486.300	483.300
485.325	482.325	486.325	483.325
485.350	482.350	486.350	483.350
485.375	482.375	486.375	483.375
485.400	482.400	486.400	483.400
485.425	482.425	486.425	483.425
485.450	482.450	486.450	483.450
485.475	482.475	486.475	483.475
485.500	482.500	486.500	483.500
485.525	482.525	486.525	483.525
485.550	482.550	484.550	483.550
485.575	482.575	486.575	483.575
485.600	482.600	486.600	483.600
485.625	482.625	486.625	483.625
485.650	482.650	486.650	483.650
485.675	482.675	486.675	483.675
485.700	482.700	486.700	483.700
485.725	482.725	486.725	483.725
485.750	482.750	486.750	483.750
485.775	482.775	486.775	483.775
485.800	482.800	486.800	483.800
485.825	482.825	486.825	483.825
485.850	482.850	486.850	483.850
485.875	482.875	486.875	483.875
485.900	482.900	486.900	483.900
485.925	482.925	486.925	483.925
485.950	482.950	486.950	483.950
485.975	482.975	486.975	483.975
486.000	483.000	487.050	480.050

* * * * *

(c) *Zone C—Southern Texas.* The geographical area in Zone C is bounded as follows:

Longitude W.94°00′ on the East, the 4.8 kilometer (3 mile) limit on the North and West, a 282 kilometer (175 mile) radius from the reference point at Linares, N.L., Mexico on the Southwest, latitude N.26°00′ on the South, and the limits of the outer continental shelf on the Southeast.

(1) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

Central	Subscriber
476.950	479.950

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Federal Register

Wednesday
February 22, 1995

Part II

Department of the Interior

Office of the Secretary
Bureau of Land Management

43 CFR Parts 4, 1780, and 4100
Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration; Exclusive of Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO–400–1110–00 24 1A]

RIN 1004–AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Office of the Secretary and the Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that govern how the Secretary of the Interior, through the Bureau of Land Management (BLM), administers livestock grazing. This rule applies to all lands on which BLM administers livestock grazing. This rule also amends the Department of the Interior's appeals regulations pertaining to livestock grazing to provide consistency with administrative remedies provided for in the grazing regulations, increases public participation in the management of the public grazing lands, and amends the regulations on cooperative relations to reflect changes in the organization of certain advisory committees. The changes will improve the management of the Nation's public rangeland resources.

DATES: This rule will be effective August 21, 1995.

Section 4130.8–1(d) will not be implemented until the grazing year beginning March 1, 1996.

ADDRESSES: Inquiries should be sent to the Director, Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Hunt, 202–208–4256.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Major Elements of the Department's Program To Promote Healthy Rangelands
III. Summary of Rules Adopted
IV. General Comments
V. Section-by-Section Analysis and Responses to Public Comments
VI. Procedural Matters
VII. Regulatory Text

I. Introduction

This rule governs the Bureau of Land Management's (BLM) administration of livestock grazing on public rangelands. The provisions of this rule will ensure proper administration of livestock grazing on the public rangelands. Many of the provisions will result in greater consistency between the administration of grazing on public rangelands by BLM and administration of grazing on National Forest System lands by the United States Forest Service (Forest Service). The rule is promulgated under the principal authorities of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1739, 1740), and the Taylor Grazing Act of 1934 (TGA) (43 U.S.C. 315a–r).

An advance notice of proposed rulemaking was published in the **Federal Register** on August 13, 1993 (58 FR 43208). A notice of intent to prepare an associated environmental impact statement (EIS) was also published in the **Federal Register** on July 13, 1993 (58 FR 37745). The Department also developed a booklet entitled *Rangeland Reform '94,* describing the Department of the Interior's (Department) proposal. Approximately 35,000 copies were distributed in late August and September of 1993 to all BLM grazing permittees and lessees, interested Congressional staff, and other interested parties. The Department received a total of about 12,600 letters from about 8,000 persons on the advance notice of proposed rulemaking, notice of intent to prepare an EIS, and the Rangeland Reform '94 summary booklet. The Department considered these comments in identifying and refining key components of the rangeland improvement effort and in preparing a proposed rule and a draft EIS.

During a three-month period beginning November 17, 1993, Secretary of the Interior Bruce Babbitt (Secretary) met on 20 occasions around the West with groups that included western governors, State and local officials, ranchers, environmentalists and other public land users. He visited local groups in Colorado, Wyoming, and Oregon who were already engaged in addressing how land management decisions should be made, and participated in extensive discussion about the components of rangeland improvement. These meetings resulted in many productive suggestions that were reflected in the proposed rule. Additionally, at the invitation of Colorado's Governor Roy Romer, the Secretary met on nine separate occasions with a group of Colorado State and local officials, ranchers, conservationists and other land users in Denver and Gunnison, Colorado, for discussions regarding a process for building a consensus-driven local approach to rangeland management. Similar meetings and follow-up discussions took place in Idaho, Oregon, and Nevada, in addition to meetings in Arizona, New Mexico, Utah and Wyoming. These meetings with the Secretary involved hundreds of hours of discussion.

On March 25, 1994, the Department published proposed rules in the **Federal Register** (59 FR 14314), with a 120 day comment period to July 28, 1994. Subsequently, at the request of commenters, the comment period was extended through September 9, 1994.

On May 13, 1994, the Department published in the **Federal Register** (59 FR 25118) a notice of availability of the draft EIS. Approximately 11,000 copies of the draft EIS were mailed to State and Federal legislators, western governors, major industry and environmental groups, the media, individuals who had commented on the advance notice of proposed rulemaking, and anyone else who requested a copy. All BLM permittees and lessees were mailed an executive summary, and provided a copy of the full document on request. Copies were also available through all BLM State Offices as well as Forest Service Regional Offices. The draft EIS analyzed in detail the proposed action and alternatives for improving the management of the Nation's public rangelands, including the proposed rule changes. On June 8, 1994, BLM and the Forest Service held 48 hearings throughout the West on the draft EIS and the proposed rulemakings; one hearing was also held that day at BLM's Eastern States Office in Virginia. Hearings were preceded by open houses staffed by Federal personnel to answer individual questions about the proposed rule. The location and procedures for the open houses and hearings were published in the May 16, 1994, **Federal Register** and announced in news releases. More than 1,900 people testified at the hearings. A transcript was made of each hearing. The transcripts are part of the public comment record and were considered during preparation of this final rule.

The Department received and considered more than 20,000 letters from over 11,000 persons on the notice of proposed rulemaking and the draft EIS. These letters included over 38,000 individual comments. The specific aspects of the notice of proposed rulemaking generating the most comments were the definitions, grazing fees, standards and guidelines for grazing, and Resource Advisory Councils (RACs). The objectives statement, mandatory qualifications, cooperative range improvement

agreements, water rights, permits, and prohibited acts also generated a great number of comments. Many letters expressed opinions that the overall rangeland improvement proposal was a disincentive for good stewardship, would have major economic impacts on rural western communities, and would result in the ''taking'' of private property. Others supported aspects of the proposal, such as broadening participation in the decisionmaking process, requiring permittees or lessees to be good stewards, cancellation of permits for nonuse, and nonmonetary settlement of minor violations. All original letters and transcripts have been kept on file in sequential order.

On December 30, 1994, the Department published in the **Federal Register** a notice of availability of the Final EIS (FEIS). The agency mailed over 14,000 individual copies to Federal agencies, United States Senators and Representatives, the western governors, major environmental and industry groups, individuals who commented either on the draft EIS or the notice of proposed rulemaking or testified at the field hearings, and anyone else who requested copies. Copies are available from any BLM Resource Area office or Forest Service Forest Office throughout the western States.

II. Major Elements of the Department's Program to Promote Healthy Rangelands

This section presents the general provisions of the Department's program to improve the public land grazing program.

Public Participation in Rangeland Management

Allowing more Americans to have a say in the management of their public lands is an important element of improving the management of the public rangelands. The American rangelands can be—and are—used for far more than grazing. Hiking, birding, camping, fishing, hunting, mountain biking and mineral development activities are among the activities that are compatible with sound grazing practices. Section 102(a)(8) of FLPMA makes it clear that the Secretary is to manage the public lands in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air, atmospheric, water resource, and archeological values.

The Department believes that the public interest will be best served if a wide range of interests are represented when decisions are being made. Thus, increased public participation is essential to achieving lasting improvements in the management of our public lands.

Under FLPMA, the Secretary is required to involve the public in many phases of public land management, including the development of regulations (section 102) and plans and programs (section 202). Section 309 authorizes the Secretary to provide for public participation in the preparation and execution of plans and programs for the management of public lands by establishing advisory councils that conform to the requirements of the Federal Advisory Committee Act (FACA).

Consistent with these provisions, the proposed rule gave extensive consideration to public participation in rangeland management. It proposed the creation of RACs in most BLM administrative districts which would be involved in the development of standards and guidelines for grazing. The RACs would have had the option of establishing rangeland resource teams and technical review teams for the purpose of providing input to be used by the RACs in developing recommendations. The RACs could request that the Secretary respond directly to their concerns if the council believed its advice was being arbitrarily disregarded. RAC members would be required to avoid conflicts of interest and to disclose direct or indirect interests in Federal grazing permits or leases, and to have experience or knowledge of the geographic area under the purview of the council.

Many comments were received on the concept of public participation. Almost all commenters supported the central principle—that public participation in decisionmaking on rangeland management should be enhanced. Comments on specific details of the proposal varied widely. Many commenters stressed their belief that the proposal was too complex and the resulting structure would create major administrative and resource needs without significant benefits. Other major comment themes addressed representation of various interests on all levels, requirements that members have local expertise, residency requirements, ability of the committees to participate in the development of standards and guidelines, the opportunity for the councils to request the Secretary to review issues, and the applicability of the FACA to the rangeland resource teams and technical review teams, among others. These comments are discussed in more detail in the section-by-section analysis of this preamble.

The proposed rule also included a detailed discussion of a model for enhanced community-based involvement in rangeland management prepared by the Colorado Working Group on rangeland improvement. This Working Group was convened by Governor Roy Romer, and met between November 1993 and January 1994. Although the Working Group considered this an experimental approach that might not be applicable to other western States, the Working Group's model contained a number of excellent ideas, which, in the Department's judgement, other States might find useful in developing their own structures for public participation. During the comment period, the Department also received a number of suggestions concerning public participation from Governor Mike Sullivan of Wyoming who had convened a Steering Committee on the Management of Federal Lands. While the Committee noted that it did not reach unanimity on all issues, the model for public participation proposed by the group also contained many excellent ideas. The Wyoming and Colorado documents were extremely helpful to BLM in formulating this final rule, and the Department appreciates the work of the individuals who participated in these efforts. Two models of public participation included in the final rule were based heavily on the Wyoming and Colorado proposals. The Wyoming and Colorado proposals suggested that increased flexibility was needed in the development of final requirements for public participation in rangeland management. In response to these and other comments the Department has attempted to develop a final rule that provides maximum flexibility for structuring the public participation process.

FLPMA directs the Secretary to establish advisory councils of not less than 10 and not more than 15 members. Members must be appointed from among representatives of the various major citizens' interests concerned with problems relating to land use planning, or with the management of the public lands located within the area for which an advisory council is established. At least one member must be a publicly elected official. The Department envisions that the RACs formed in each State under the final rule will fulfill these statutory requirements. The RACs would also be subject to FACA (5 U.S.C. Appendix).

The rules as finalized today are designed to implement certain basic requirements that are essential to fulfilling the requirements of FACA, FLPMA, and the needs of the

Department's program to improve management of the public rangelands:

—A RAC of 10–15 members, as required by § 309 of FLPMA;
—Openness and balance as required by FACA, assuring participation of commodity, environmental, and other interests;
—Consensus decisionmaking, with a majority of each group required to send recommendations forward;
—A RAC that is strictly advisory, as required by FACA and other statutes.

Consistent with many comments received, the rule provides a high degree of flexibility so that decisions can be made locally about how to structure the councils. Section 1784.6–1 of this final rule sets forth basic requirements that must be met by all councils. Three general interest groups will be represented, from which 10 to 15 members must be chosen in a balanced fashion. The first group includes various commodity industries, such as grazing and mineral interests, and other interests that benefit from use of public lands, such as outfitters. The second group includes nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, and representatives of dispersed recreational activities, such as birders or hikers. The third group includes persons who hold State, county, or local elected office, the public-at-large, Indian tribes within or adjacent to the area covered by the advisory council, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands.

RAC members will be appointed by the Secretary. This is a requirement of both FLPMA and FACA. Governors of States in which the councils will be organized will be requested to provide a list of nominees for the Secretary's consideration. The Secretary encourages Governors to formulate nominations through a process open to the public. In addition, a public call for nominations will be made through a notice in the **Federal Register** and other appropriate publications. Persons can nominate themselves for membership. Membership of each RAC will reflect a balance of views to ensure that the council represents the full array of issues and interests within the area covered by the council associated with public land use, management, protection and an understanding of the Federal laws and regulations governing public lands. Individuals can qualify to serve on a RAC if they possess relevant experience or expertise and have a commitment to collaborative effort, successful resolution of resource management issues and application of the relevant law. Members must have experience or knowledge of the geographic area under the purview of the council, must be residents of a State in which the area covered by a RAC is located, and must be supported by letters of recommendation from the groups or interests they will represent. An individual may serve on only one RAC. All members must receive training on issues related to rangeland management.

All RACs will be required to have specified quorum and voting rules, including the requirement that a majority of members from each category support a proposal before a recommendation can be forwarded to the authorized officer. Travel and per diem will be paid, and BLM will provide administrative support for the councils. A BLM employee will be named ''designated Federal officer'' as required by FACA.

All members of the council will be subject to conflict of interest provisions. To facilitate implementation of Federal conflict of interest requirements, council members will have to disclose their direct or indirect interest in BLM leases, licenses, permits or contracts. This does not mean that individuals with such interests cannot serve on councils; however, no member can participate in specific issues in which he or she has an interest.

The role of the RAC is to provide advice to BLM. Each RAC will focus on the full array of multiple use issues associated with public lands within its area of jurisdiction. They will consult on the preparation of standards and guidelines for grazing administration. The RACs will advise the Secretary and BLM—and other agencies as appropriate—on matters relating to multiple use issues associated with public lands and resources. They will also provide advice on preparation, amendment, and implementation of land use management plans and activity plans and consult in planning for range development and improvement programs. RACs will not provide advice on internal BLM management concerns such as personnel or budget expenditures.

Final § 1784.6–2 provides three models that supply additional detail on the structuring of public participation. Decisions about which model will be used in particular areas will be made by the State Directors of BLM, in consultation with affected Governors and other interested parties. Model A is based heavily on the suggestions made by the Colorado Working Group. It includes three levels of groups—the RAC itself, local five member rangeland resource teams appointed by the RAC based either on its own initiative or as a result of local requests, and technical review teams established directly by BLM to solve specific, short-term technical issues. The RACs would have 15 members and would be established on BLM District boundaries, ecoregions, or resource areas. A 60% vote of the RAC membership (including a majority of each category of users) would be required to send suggestions to BLM.

Model B is based heavily on the suggestions made by the Wyoming Steering Committee. It includes 3 levels of groups—the 15 member RAC, formed on either a Statewide or ecoregion basis, a more local 10 member rangeland resource team formed by the RAC, and technical review teams established directly by BLM to solve specific, short-term technical issues. In addition to requiring membership to be balanced among the commodity, environmental and local interest groups specified in § 1784.6–1(c), the RAC would include individuals representing wildlife, grazing, minerals and energy, and established environmental interests. An 80% vote of the RAC membership (including a majority of each interest group) would be required to send suggestions to BLM.

Model C was developed by BLM in response to additional issues raised by the commenters. In addition to the requirements specified in § 1784.6–1, this model accommodates formation of the RACs, and any type and number of subgroups as needed. The RAC can be formed along State, BLM district, or ecoregion boundaries. A majority of each of the three categories of users must vote affirmatively to send suggestions to BLM. General function subgroups at the local level can be formed on the initiative of the RAC or by local initiative. Special function groups formed to solve special technical problems would be constituted by BLM on its own initiative or in response to requests from RACs or any of the subgroups under the RACs.

The Department expects that most, if not all, public land managed by BLM will fall under the purview of one of these councils. Exceptions will be made where BLM State Director determines that there is insufficient interest to form a council or that it would be impossible for such a council to have effective participation due to the location of the public lands with respect to the population. Implementation of the principles discussed above will result in

enhanced public involvement in rangeland management, as envisioned throughout FLPMA.

The Department intends to start using the RACs for advice shortly after the rule becomes effective on August 21, 1995. This will require the selection of the advisory council model for each State and the nomination of advisory council members within the six-month period before this rule becomes effective. The decision regarding which advisory council model will be implemented in each State will be based on recommendations from BLM State Directors following consultation with the respective Governors and input from the public. Once the preferred model is identified, the internal process of developing the council charters can begin. The Department will also seek nominations for membership on the advisory councils from Governors and through a public call for nominations, pursuant to 43 CFR 1784.4–1. Finally, charters for the advisory councils will be drafted and reviewed by the Department, the Office of Management and Budget, and the General Services Administration. The timely establishment of the advisory councils will help ensure that there is adequate time for the councils to participate in developing State or regional standards and guidelines.

Range Improvements and Water Rights

The final rule conforms with common law concepts regarding retention of the title of permanent improvements in the name of the party that holds title to the land. Accordingly, after August 21, 1995, the title to all new grazing-related improvements constructed on public lands, or improvements related to the vegetation resource of public lands, except temporary or removable improvements, will be in the name of the party that holds title to the land, i.e. the United States. This provides consistent direction within BLM and makes BLM practice consistent with that of the Forest Service. Permanent range improvements will be approved through a cooperative range improvement agreement. A permittee's, lessee's, or cooperator's interest for contributed funds, labor, and materials will be documented. This documentation is necessary to ensure proper credit for purposes of reimbursement pursuant to section 402(g) of FLPMA, which requires compensation for the permittee's or lessee's authorized permanent improvements whenever a permit or lease is cancelled, in whole or in part, in order to devote the lands to another public purpose. Title to improvements existing before the effective date of this rule is not affected.

The final rule adopts without change the language of the proposed rule relating to water rights. The final rule provides consistent direction for BLM regarding water rights on public lands for livestock watering purposes. It is intended to make BLM's policy consistent with Forest Service practice, and with BLM policy on asserting water rights for livestock grazing prior to changes in the early 1980's. This section provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where state policy permits it; for example, the Wyoming policy is consistent with the rule. Development of new water sources on public lands associated with a grazing permit or lease will be subject to cooperative range improvement agreements as provided in section § 4120.3–2.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Administrative Practices

With this final rule, BLM has made a number of changes to improve the administration of grazing on lands managed by BLM. These changes principally affect public participation in range decisions, administrative appeals and implementation of decisions, disqualification of applicants for grazing permits and leases based on a prior record of noncompliance, acts prohibited by the regulations, and the definition and implementation of conservation use.

Interested public. An important element of rangeland improvement involves facilitating effective public participation in the management of public lands. To implement this goal, the term ''affected interests'' is removed throughout the rule and replaced with the term ''interested public.'' The rule also removes the authorized officer's discretion to determine whether an individual meets the standards for ''affected interest'' status. The final rule adopts the definition of ''interested public'' as set forth in the proposed rule.

This change provides a consistent standard for participation by the public in decisions relating to grazing. Any party who writes to the authorized officer to express concern regarding the management of livestock grazing on specific grazing allotments will be recognized as a member of the ''interested public.''

Requirements for consultation with the interested public have been added in various sections of the rule, including those that deal with permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs.

Appeals. Comments on the appeals procedures contained in the proposed rule suggested that the provisions were not clear. A number of changes have been made in the final rule to clarify the provisions. Most importantly, the final rule now references existing procedures in 43 CFR part 4, rather than repeating language from that part.

Under the final rule, persons choosing to appeal a decision of the authorized officer will normally be provided a 30-day period in which to file an appeal. Appellants may also petition the Director of the Office of Hearings and Appeals (OHA), or the Interior Board of Land Appeals (IBLA) to stay the decision until the appeal is decided. Where a petition for stay has been filed with an appeal, the Department's OHA has 45 days from the expiration of the 30-day appeal period either to grant or deny the petition for stay, in whole or in part. Thus, in cases where a person has filed a petition for stay of the decision of the authorized officer along with an appeal, and where the request for stay is denied, implementation of the decision would be delayed up to 75 days. In the event a stay of the decision is granted in whole or in part, the decision will be stayed until such time as a determination on the appeal is made.

This rule clarifies that the authorized officer can issue final decisions and

place them in effect immediately when it is necessary to protect rangeland resources from damage in situations described under § 4110.3–3(b). The rule also adds a provision that decisions to close areas to specified kinds of livestock use when it is necessary to abate unauthorized use, as provided in § 4150.2(d), may be issued as final decisions. In these cases, the permittee or lessee will still have 30 days to appeal the decision and petition for a stay, and the OHA will have 45 days to evaluate the petition; however, the decision will be in effect on the date specified in the decision and will remain in effect unless a stay is granted.

The objective of placing decisions in immediate effect under the circumstances specified in the rule is to provide for timely action to benefit rangelands and to reduce administrative delays. The rule does not take away the ability of affected parties to file an appeal, as provided by Section 9 of TGA, or to request a stay of the decision until such time as the appeal is decided. The Department believes making decisions under §§ 4110.3–3(b) and 4150.2(d) effective immediately under the standards provided for in this final rule is critical to meeting the goals of sound rangeland management.

Qualifications. The final rule makes no substantive change from the proposed rule. It includes a provision to disqualify applicants for new or additional grazing permits and leases if: (1) The applicant or affiliate has had any Federal grazing permit or lease, or any State grazing permit or lease within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or (2) the applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

These requirements do not apply to applicants for renewal of grazing permits or leases. The final rule gives the authorized officer the authority to consider whether an applicant for renewal is in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought.

Prohibited acts. The final rule adopts provisions of the proposed rule, except that provisions from § 4170.1–3, as proposed, have been moved to a new paragraph in § 4140.1. Minor clarifying changes are also made. As in the proposed rule, Subpart 4140, ''Prohibited Acts,'' is revised to modify the list of actions that are defined as prohibited acts. Penalties applicable to prohibited acts are set forth in § 4170.

The proposed rule amended the list of prohibited acts to include violations of Federal and State laws and regulations concerning water pollution, certain predator control activities; application or storage of pesticides, herbicides or other hazardous materials; alteration or destruction of natural stream courses; wildlife destruction; and removal or destruction of archeological resources. It also added violations of State laws regarding the stray of livestock to the list.

The final rule adopts these provisions. It does not attempt to list in the text of the regulations all of the specific Federal and State laws which, if violated, could constitute prohibited acts. A list of such laws was included in the preamble to the proposed rule at 59 FR 14323–4. It is not the intent of this rule for the authorized officer to take direct enforcement action under the provisions of these laws; or to take enforcement steps involving the grazing permit or lease for any and all violations, no matter how *de minimis* or technical; or for violations of laws that, while they do deal with violations of State and Federal laws dealing with water pollution and other matters, do not reflect meaningfully upon the ability of the permittee or lessee to be a good steward of the public lands. The final rule clarifies that violations of these State and Federal laws would constitute prohibited acts only where three conditions are met: (1) The violations involve or affect BLM lands; (2) the violation is related to grazing use authorized by a permit or lease, and (3) the permittee or lessee has been convicted or otherwise found to be in violation of the State or Federal laws by final court or agency action. The final rule also moves similar provisions regarding the Bald Eagle Protection Act, the Endangered Species Act (ESA), and the Wild Free-roaming Horse and Burro Act from § 4170 to § 4140 to increase clarity and readability.

Conservation use. The final rule adopts the proposed definition with one clarifying change. Conservation use benefits the range by facilitating improvement in forage conditions, watersheds, riparian areas, and so on. It provides flexibility that is needed to enable permittees or lessees to undertake activities on a portion or all of an allotment to promote resource protection or enhancement, which includes making progress toward resource condition objectives.

The Department believes that this provision will provide permittees and lessees with an additional tool to manage grazing operations properly, provided that the conservation use is consistent with land use plans. Allotments in conservation use will not be subject to grazing fees since no forage will be consumed by livestock. However, permittees and lessees requesting conservation use will be required to maintain existing improvements so that when the allotment is returned to actual use such improvements will be in good working order. A service charge can be charged for conservation use, as it is for actual use. Conservation use will be initiated by request of the permittee or lessee. The BLM will *not* impose conservation use on an unwilling permittee or lessee.

The advantage of conservation use to the operator is that it allows increased flexibility. The operator will be able to enjoy the benefits of a long-term rest of the allotment from grazing while preserving the ability to resume grazing in the future. During the conservation use, BLM will not consider allowing another operator to use any resulting forage.

Resource Management Requirements, Including Standards and Guidelines. The final rule adopts the substance of the provisions proposed in subpart 4180. The Department has reorganized and rewritten the subpart to improve clarity and incorporate more fully a watershed management approach.

The Fundamentals of Rangeland Health. The final rule establishes the fundamentals of rangeland health for grazing administration (formerly referred to as the national requirements). These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards and objectives, and habitat for threatened or endangered species or other species of special interest. The Department believes that these provisions are critical to ensuring that BLM's administration of grazing helps preserve currently healthy rangelands and restore healthy conditions to those areas that currently are not functioning properly, especially riparian areas.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1. Fundamentals of rangeland health, are met or significant progress is being made to meet these conditions, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock

stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

State or Regional Standards and Guidelines. Standards and guidelines are to be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs.

State or regional standards and guidelines will be developed, under the umbrella of the fundamentals and consistent with the guiding principles of this final rule, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

The guiding principles for the development of standards presented in this final rule pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. The guiding principles for guidelines direct the identification of acceptable or best grazing management practices that will result in or ensure significant progress towards fulfillment of the standards.

State or regional standards and guidelines will provide the resource measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

Once standards and guidelines are in effect, the authorized officer is required to take appropriate action under 43 CFR part 4100 as soon as practical, but not later than the start of the next grazing year, upon determining that existing grazing management practices are significant factors in failing to meet the standards and conform with the guidelines. Appropriate actions may include reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Fallback Standards and Guidelines. The Department recognizes the importance of putting standards and guidelines in place in a timely manner, and has provided a mechanism for doing so in this rule. This final rule includes a provision for fallback standards and guidelines that would become effective 18 months after this rule becomes effective in the event that State or regional standards and guidelines have not been developed and put into effect. They will remain in effect until State or regional standards and guidelines are in effect.

The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles for State or regional standards discussed above. Similarly, the fallback guidelines include grazing management practices while the guiding principles for State or regional guidelines refer more generally to the types of concerns to be addressed. The BLM State Directors can adjust the fallback standards and guidelines, subject to approval of the Secretary, to fit State or local conditions.

Fallback standards and guidelines will be applied in the same manner as standards and guidelines developed for a particular State or region, which are discussed above.

NEPA and Implementation of Standards and Guidelines. The fundamentals of rangeland health proposed in this rule, and all standards and guidelines whether fallback, State, or regional, will be implemented subject to the National Environmental Policy Act of 1969 (NEPA) and applicable land use planning regulations. The fundamentals of rangeland health, the guiding principles for the development of State and regional standards and guidelines and the fallback standards and guidelines were analyzed in the FEIS for this final rulemaking. Any additional NEPA analysis required during development of State or regional standards and guidelines could tier to the analysis of the fundamentals of rangeland health and standards and guidelines presented in the FEIS.

BLM planning regulations direct that actions be in conformance with BLM land use plans. In some instances, the standards and guidelines may be consistent with existing land use plans and implementation may proceed without further action. In many cases, however, land use plans will require modification to ensure conformance with the land use plan and the standards and guidelines. The Department intends to develop State or regional standards and guidelines, complete plan conformance tests, and undertake necessary plan amendments within 18 months of the effective date of this rule. State or regional standards and guidelines will be implemented as they are finalized and approved by the Secretary.

The Federal Grazing Fee and Subleasing

Grazing fees. The fee portion of the proposed rule generated numerous public comments with diverse and conflicting views about the impact of an increased fee and the calculation of the fee formula. The Department has decided not to promulgate the fee increase provision of the proposed rule in order to give the Congress the opportunity to hold additional hearings on this subject and to enact legislation addressing appropriate fees for grazing on public lands. Other changes not pertaining to fees proposed in section 4130.7–1, redesignated as § 4130.8–1 in the final rule, remain a part of this rulemaking package.

As proposed, this section would have been amended by revising the grazing fee formula, with a provision for phasing in the grazing fee increase over the years 1995 through 1997. The proposed rule provided for a 30% incentive fee reduction. The incentive was to have been implemented after BLM developed separate rules describing the eligibility criteria for this incentive based fee. The proposed rule also provided that the full fee increase would not go into effect in the event that a separate final rule prescribing qualification criteria for the incentive-based fee was not completed. Multiple-year billing would have been allowed in certain circumstances. In addition, the proposed rule provided for a 25 percent cap on changes in the calculated fee from year to year. These proposals are not adopted in the final rule.

As adopted by today's action, Section 4130.8–1 clarifies the definition of billing unit, provides for assessing a surcharge in certain instances for the public landlord's share of authorized pasturing agreements associated with public land grazing, and clarifies that grazing use occurring before a bill is paid is an unauthorized use that may be dealt with under the settlement and penalties sections of this rule and may

result in the limitation of flexibility otherwise provided under an allotment management plan.

Subleasing. The Department's proposed rule would have imposed a surcharge on authorized leasing or subleasing in two situations: (1) the subleasing of public land grazing privileges associated with the leasing of privately-owned base property; (2) the pasturing of livestock owned by someone other than the grazing permittee or lessee where the permittee or lessee controls such livestock. This proposal was made in response to findings of the General Accounting Office (GAO) (see, e.g., RCED–86–168BR), and the Office of the Inspector General (OIG) (see report #92–1–1364) that permittees and lessees who sublease are unduly benefitting from their permits or leases. Sons and daughters of grazing permittees and lessees were exempted from the surcharge.

In response to comments that putting a surcharge on authorized subleasing would adversely affect the ability of new ranchers with limited capital to enter the livestock business, the Department has not included the surcharge associated with the authorized leasing or subleasing of public land grazing privileges associated with base property in the final rule. However, in order to address the Secretary's intent to establish a fair and reasonable return to the public, the surcharge on pasturing agreements is adopted in the final rule. The Department recognizes the need to avoid penalizing children of grazing permittees and lessees who graze cattle under their parents' permits or leases and has included an exemption from the surcharge for pasturing for sons and daughters of public land permittees and lessees. The Department believes that, as landlord of the public lands, it must obtain a fair share, on behalf of the American public, of any income received by the permittee for pasturing cattle belonging to others. Additionally, the policy of charging a surcharge for pasturing is consistent with standard practices on most State grazing lands.

Commenters also stated that the proposed method for calculating the surcharge did not reflect local conditions. The Department has addressed this concern by modifying the method for calculating the surcharge on pasturing agreements. The final rule provides that the surcharge on pasturing agreements will be equal to 35 percent of the difference between the Federal grazing fee per AUM and the prior year's private lease rate for the appropriate State for forage used by livestock owned by another party other than the permittee or lessee. A surcharge of 35 percent of the difference between the Federal grazing fee and the private lease rate for the appropriate State will recover an appropriate ''landlord's share'' and will result, on the average across all States, in a surcharge approximating the surcharge presented in the proposed rule and analyzed in the EIS for this rule. Pasturing agreements must have authorization from the authorized officer. Under this final rule, to calculate the surcharge BLM will use the per animal unit month (AUM) private grazing land lease rate for the appropriate State as reported annually by the National Agricultural Statistics Service (NASS).

III. Summary of Rules Adopted

These final rules revise Parts 4, 1780, and 4100 of Title 43. The following summary highlights changes from the current regulations, most of which were also included in the proposed rule. The following provisions are included:

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477, Effect of decision suspended during appeal, is revised to reflect that grazing decisions will no longer be suspended automatically when an appeal is filed. Instead, final grazing decisions will be subject to the provisions of 43 CFR 4.21, which governs the effect of administrative decisions pending appeal before the Department's OHA.

Part 1780—Cooperative Relations

Section 1784.0–5 is amended by replacing the term ''Authorized representative'' with the term ''Designated Federal officer.'' These changes provide consistency with the terminology of FACA.

Section 1784.2–1, Composition, is amended to remove the eligibility requirement for grazing advisory board members. The final rule also adds a requirement that advisory committee members have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Section 1784.2–2, Avoidance of conflict of interest, is amended to provide that no advisory committee member, including members of RACs, can participate in any matter in which such member is directly interested, and must disclose his or her direct or indirect interest in Federal permits, leases, licenses, or contracts administered by BLM.

Section 1784.3, Member service, establishes that appointments to advisory committees will be for two-year terms unless otherwise specified in the committee charter or appointing document. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments and terms and election procedures have been removed. The rule also provides that travel and per diem will be paid to committee members but not to members of any subgroups formed under the committees.

Sections 1784.5–1, Functions and 1784.5–2, Meetings, are amended by replacing the term ''authorized representative'' with the term ''designated Federal officer.'' These changes provide consistency with the terminology of FACA.

Section 1784.6–1, Resource Advisory Councils—Requirements, establishes requirements for RACs. It provides that, with certain exceptions, councils will be established to cover all BLM lands. RACs will provide advice to the BLM official to whom they report regarding the preparation, amendment and implementation of land use plans and the development of standards and guidelines. The councils will also assist in establishing other long-range plans and resource management priorities, including plans for expending range improvement funds. RACs will not provide advice on personnel management, nor on the allocation and expenditure of funds subsequent to budget planning.

Appointments to RACs will be made by the Secretary. In making appointments, the Secretary will consider nominations from the Governor of the affected State and nominations received in response to a public call for nominations. All nominations will be required to be accompanied by letters of recommendation from interests or organizations to be represented, and members must be residents of a State in which the area covered by the council is located.

Council members will be selected in a balanced manner from persons representing interest groups. There are 3 general groups: Commodity Industries—including ranching and developed recreational activities; Recreational/Environmental—nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, dispersed recreational activity interests—such as bicyclists and hikers; and Local Area Interest—persons who hold State,

county, or local elected office, representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of natural resources, water quality, water rights, and State lands. At least one of the members appointed to each council must hold elected State, county, or local office. An individual may not serve on more than one RAC at any given time. Council members must have demonstrated experience or knowledge of the geographic area for which the council provides advice and a commitment to collaborative decisionmaking.

All members of RACs must attend a course of instruction in the management of rangelands that has been approved by BLM State Director.

Each RAC will have requirements for quorums and for making recommendations to the Department. Councils can request that the Secretary respond directly where the council believes its advice has been arbitrarily disregarded by the BLM manager. If requested, the Secretary will respond directly to a council's concerns within 60 days. Such a request would require agreement by all members of the council. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

Administrative support for a council will be provided by the office of the designated Federal officer.

Section 1784.6–2, RACs—Optional features, establishes optional features for RACs. Three different models are provided, and BLM State Director, in consultation with the Governor and other interested parties, will determine which model will best suit the needs of the State. General characteristics of the three models are presented above, in the section on ''Public Participation in Rangeland Management'' under the discussion of ''Major Elements of the Department's Program to Promote Healthy Rangelands.'' The first model is based largely on the model developed by the Colorado Working Group. The second model is based largely on the model developed by the Wyoming Steering Committee. The third model was developed by BLM after consideration of public comment.

Previous sections 1784.6–1, National Public Lands Advisory Council, 1784.6–4, District advisory councils, and 1784.6–5, Grazing advisory boards, are removed.

Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2, Objectives, is amended by revising the statement of objectives to include promoting healthy, sustainable public rangelands; accelerating restoration and improvement of public rangelands to properly functioning conditions; promoting the orderly use, improvement and development of the public lands; establishing efficient and effective administration of grazing of public rangelands; and providing for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

Section 4100.0–5, Definitions, is amended by removing the definition of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing''; revising the definitions of ''Active use,'' ''Actual use,'' ''Allotment management plan (AMP),'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and by adding in alphabetical order the definitions of ''Activity plan,'' ''Affiliate,'' ''Annual rangelands,'' ''Conservation use,'' ''Ephemeral rangelands,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing.''

Section 4100.0–7, Cross-references, is amended to guide the public to the applicable sections of 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, to 43 CFR part 1600 regarding the development of land use plans, and to 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9, Information collection, is added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this rule, why the information is being collected, and what the information will be used for by BLM.

Subpart 4110—Qualifications and Preference

Section 4110.1, Mandatory qualifications, is amended to require that applicants for renewal or issuance of new grazing permits or leases, and any affiliates of such applicants, must be determined by the authorized officer to have a satisfactory record of performance. Applicants and any affiliates for renewal must be determined to be in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought, and with applicable regulations. Applicants and any affiliates who have had a Federal grazing permit or lease, or a State grazing permit or lease for lands within the Federal grazing allotment for which application is made, cancelled within 36 months preceding application shall be deemed not to have a satisfactory record of performance. Applicants and their affiliates that are barred from holding a Federal grazing permit or lease by court order are also disqualified from receiving a new permit or lease. The amendments to this section also clarify that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, but who meet the criteria of this section, are qualified for a grazing permit or lease.

Section 4110.1–1, Acquired lands, is amended to clarify that existing grazing permits and leases on lands acquired by BLM are subject to the permit or lease terms and conditions that were in effect at the time of acquisition. Following expiration of the pre-existing permit or lease, applicants for grazing permits or leases will be subject to the provisions of § 4110.1 of this final rule.

Section 4110.2–1, Base property, is amended to clarify that base property must be capable of serving as a base for livestock operations but it need not actually be in use for livestock production at the time the authorized officer finds it to be base property. Further, the final rule makes clear that where authorized water developments on public lands that have been previously recognized as base property require reconstruction or replacement in order to continue to service the same area, and the reconstructed or new development has been authorized through a cooperative range improvement agreement, the permittee's or lessee's interest in the new or reconstructed water development will continue to be recognized as base property.

Section 4110.2–2, Specifying permitted use, is retitled to reflect the redefinition of the term ''grazing preference,'' and amended to replace the term ''grazing preference'' with ''permitted use.'' Also, the section is amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount

of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

Section 4110.2–3, Transfer of grazing preference, is amended to reflect the new requirements of § 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum of three years, unless a shorter term is approved by the authorized officer.

Section 4110.2–4, Allotments, is amended to clarify that designation and adjustment of allotment boundaries includes the authority for, and the practice of, combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency. The section clarifies that modification of allotments must be done through agreement or decision of the authorized officer, following consultation, cooperation and coordination with involved persons, including the interested public.

Section 4110.3, Changes in permitted use, is amended by replacing the term ''grazing preference'' with ''permitted use,'' and by clarifying that changes in permitted use will be supported by monitoring data, field observations, land use planning decisions, or data collected through other studies.

Section 4110.3–1, Increasing permitted use, is amended by including the requirement that a permittee, lessee, or other applicant must be determined to be qualified under subpart 4110, by substituting the term ''permitted use'' in place of ''grazing preference,'' and by clarifying the requirements for consultation. Also, reference to a permittee's or lessee's demonstrated stewardship is added to factors to be considered in allocating available forage.

Section 4110.3–2, Decreasing permitted use, is amended by revising the heading, revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary, and by deleting paragraph (c), which contained provisions for suspended use. The amendment adds ecological site inventory and other recognized methods for determining forage production as methods of identifying when use exceeds the livestock carrying capacity of the area considered. Monitoring remains as a means of determining forage production. The amendment also adds a reference to the fundamentals of rangeland health and standards and guidelines.

Section 4110.3–3, Implementing reductions in permitted use, is retitled and previous paragraph (a) and other requirements for phased-in reductions in permitted use are removed. Previous paragraph (b) is amended to remove the term ''suspension of preference'' and add in its place the term ''reductions in permitted use.'' The phrase ''when continued grazing use poses a significant risk of resource damage from these factors'' is amended to read ''when continued grazing use poses an imminent likelihood of significant resource damage.'' This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Additionally, paragraph (b) provides, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction, and clarifies the action of the field manager, requirements for consultation, cooperation and coordination with involved persons, including the interested public. Previous paragraph (c) is redesignated as paragraph (b) and amended to remove the word ''temporary'' to recognize that the influences of natural events such as drought can significantly affect vegetation health and productivity for several months or years after a drought has passed. Redesignated paragraph (b) retains the special provisions for making decisions effective upon issuance or on the date specified in the decision when action is needed to protect rangeland resources.

Paragraph (a) of § 4110.4–2, Decreases in land acreage, is amended by removing reference to suspended use. Reductions in authorized use under preference permits or leases will no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2, Allotment management plans and resource activity plans, is amended by revising the heading and by adding a reference to other activity plans that may prescribe grazing management. The final rule clarifies that draft AMPs or other draft activity plans may be prepared by other agencies or permittees or lessees, but that such plans do not become effective until approved by the authorized officer. AMPs must include standards and guidelines. Paragraph (a) is also amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process.

The final rule also provides that permits and leases must include in their terms and conditions a requirement for conformance with AMPs or other applicable activity plans. Further, it provides that flexibility granted to permittees or lessees under a plan will be determined on the basis of demonstrated stewardship. The rule clarifies the existing provision that the inclusion of lands other than public lands in an AMP or other activity plan is discretionary. Finally, this section references the NEPA analysis and related public participation that is required for the planning and revision of allotment or activity plans, and provides that the decision document that follows the environmental analysis serves as the proposed decision for purposes of subpart 4160.

Section 4120.3–1, Conditions for range improvements, is amended by specifying in paragraphs (b) and (e) that ''cooperative agreements'' refers to cooperative range improvement agreements, and by inserting a new paragraph (f) addressing reviews of decisions associated with range improvement projects. The amendment clarifies the process for administering protests and appeals of decisions and provides that appeals are subject to the administrative remedies process set forth in 43 CFR part 4160.

The heading of § 4120.3–2, Cooperative range improvement agreements, is revised to clarify that this section deals with cooperative range improvement agreements as opposed to ''cooperative agreements'' with other Federal or State agencies. The section is amended to clarify that title will be in the United States for all new permanent grazing-related improvements constructed on public lands.

Title to temporary grazing-related improvements used primarily for livestock handling or water hauling can still be held by the permittee or lessee. The amendment will not affect ownership or rights currently held in a range improvement.

The provisions pertaining to title do not affect the existing practice of retaining a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be used in determining compensation due the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose, including disposal of the lands. This record may also be considered during

the transfer of grazing preference to ensure that all interests in range improvements have been assigned to the transferee.

The amendment does not change agreements currently in effect. The amendment also clarifies that permanent water improvement projects will be authorized through cooperative range improvement agreements.

Section 4120.3–3, Range improvement permits, is amended to make it clear that a permittee or lessee may hold title to removable livestock handling facilities and to temporary improvements such as troughs for hauled water or loading chutes. The amendment will not affect ownership or rights currently held in a range improvement.

The final rule provides that BLM may mediate disputes when necessary about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use. Finally, the rule removes as unnecessary the provision that permittees or lessees can control their livestock's use of ponds or wells.

A new section § 4120.3–8, Range improvement fund, is added to address the distribution and use of the ''range betterment'' funds appropriated by Congress through section 401(b) of FLPMA for range improvement expenditures by the Secretary. The range betterment fund has been called the range improvement appropriation by Congress, and is known by that title in BLM. The final rule provides for distribution of the funds by the Secretary, with one-half of the range improvement fund to be made available to the State and District from which the funds were derived. The remaining one-half is to be allocated by the Secretary on a priority basis. All range improvement funds will be used for on-the-ground rehabilitation, protection and improvements of public rangelands.

The final rule further clarifies that range improvement includes activities such as planning, design, layout, modification, as well as maintaining, monitoring and evaluating the effectiveness of specific on-the-ground range improvements in achieving resource condition and management objectives.

The final rule also requires consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs will also be consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities.

Section 4120.3–9, Water rights for the purpose of livestock grazing on public lands, is added to provide consistent direction for BLM regarding water rights on public lands for livestock watering purposes. This section provides that the United States will acquire, perfect, maintain, and administer any rights to water obtained on public land for livestock watering on public land in the name of the United States to the extent allowed by State law.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Section 4120.5 is added to recognize and encourage cooperation with, among others, State, county, Indian tribal, and local government entities and Federal agencies.

Section 4120.5–1, Cooperation with State, county, and Federal agencies, is amended to recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships.

Subpart 4130—Authorizing Grazing Use

This section is reordered to follow a more logical sequence. This discussion will use the new numbers and cross reference the old numbers. A table showing old and new numbers is included in the section-by-section discussion of this subpart.

Section 4130.1, Applications, is added. This action merely adds a title for purposes of the reorganization of the subpart.

Section 4130.1–1, Filing applications, is renamed from the proposed ''Applications'' and amended slightly to accommodate the new category of use, conservation use, which is adopted in this final rule.

Section 4130.1–2, Conflicting applications, is amended to add criteria to be considered in granting a use authorization or permit or lease. The rule incorporates the history of applicants' and affiliates' compliance with the terms and conditions of Federal and State grazing permits and leases and demonstrated stewardship of the public lands as criteria for granting permits or leases where there is more than one qualified applicant.

Section 4130.2, Grazing permits or leases, is amended so that permits and leases will continue to be offered for 10-year terms except in specified circumstances. The final rule also clarifies that all grazing permits and leases issued, including the transfer or renewal of permits and leases, will include terms and conditions addressing the fundamentals of rangeland health and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other factors that will assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands. The final rule also provides that the authorized officer must consult with interested parties prior to the issuance or renewal of grazing permits and leases and prohibits the offering or granting of permits and leases to applicants who refuse to accept the terms and conditions of the offered permit or lease.

The final rule clarifies the process of application for and granting of conservation use and temporary nonuse. Conservation use is established as one of the allowable uses for which a permit or lease may be granted when it is in conformance with the applicable land use and activity plans and the appropriate standards and guidelines.

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse have been developed in response to a recommendation from the March 19, 1986, OIG's review of the grazing management program.

Section 4130.3, Terms and conditions, is amended through a minor addition to reflect the requirement to conform with the fundamentals of rangeland health and standards and guidelines of subpart 4180.

Section 4130.3–1, Mandatory terms and conditions, is amended through minor additions and deletions which

clarify that use must not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section is further amended to add a paragraph (c) that requires that the fundamentals of rangeland health and the appropriate standards and guidelines be reflected in the terms and conditions of permits, leases and other authorizations.

Section 4130.3–2, Other terms and conditions, is amended to provide for proper rangeland management and to remove unnecessary language. The final rule allows terms and conditions to provide for improvement of riparian area functions and protection of rangeland resources and values consistent with applicable land use plans. Paragraph (h) affirmatively states that BLM will have reasonable administrative access across the permittee's or lessee's owned or leased private lands for the management and protection of public land.

Section 4130.3–3, Modification, is amended to clarify consultation requirements in the modification of terms and conditions of permits and leases. The rule provides for greater State and public participation when changes are proposed that are not within the scope of the existing permit or lease. The rule also provides for increased State and public participation during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management.

Section 4130.4, Authorizations within terms and conditions of permits and leases, is amended to allow field managers to make temporary changes in authorized use that are within the scope of existing permits and leases.

Section 4130.5, Free-use grazing permits, is modified to reflect new circumstances under which the authorized officer may grant free-use permits. This new provision was contained in § 4130.7–1 of the proposed rule.

The final rule provides that free use can be permitted where the primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage, to conduct scientific research or administrative studies, or to control noxious weeds.

Section 4130.6–1, Exchange of use grazing agreements, is amended to specify that exchange of use grazing agreements must be consistent with management objectives and compatible with existing livestock operations. The agreements will be required to address the fair sharing of maintenance and operation of range improvements and will be approved for the same term as any leased lands that are offered.

Section 4130.6–2, Nonrenewable grazing permits and leases, is modified to require the authorized officer to consult with the affected permittee or lessee, the State, and the interested public before issuing a nonrenewable permit.

Section 4130.6–3, Crossing permits, is modified to specify that crossing permits are a form of temporary use authorization.

Section 4130.7. Ownership and identification of livestock, is amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee must have an approved use authorization and must have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources.

Sons and daughters of permittees or lessees are exempted from the provisions of this section in specified circumstances. This is necessary to allow sons and daughters, who are grazing livestock on public lands under their parents' permit or lease in specified circumstances, to avoid the pasturing surcharge provided in § 4130.8.

Section 4130.8–1, Payment of fees, is amended to make clear the definition of a billing unit, to provide for the assessment of a surcharge for authorized pasturing of another owner's livestock and to clarify that grazing use that occurs before a bill is paid is an unauthorized use, may be dealt with under the settlement and penalties sections of these regulations. Also, the section is amended to clarify that delays in payment of actual use billings and noncompliance with the terms and conditions of permits or leases may result in the loss of after-the-grazing-season billing privileges authorized under an AMP. For administrative convenience, the assessment of pasturing surcharges will not begin until the start of the next grazing year, March 1, 1996.

The final rule recognizes two types of authorized subleasing. The first is the sublease of public land grazing privileges along with the base property associated with the permit or lease. Such a sublease of the public land grazing privileges must be accompanied by a lease or sublease of the associated base property and the BLM authorized officer must approve the transfer of the grazing permit or lease. Such transfers shall be for a minimum of three years unless it is determined by the authorized officer that a shorter period is consistent with management and resource condition objectives. The second is a pasturing agreement under which livestock not owned by the permittee or lessee, but under the control of the permittee or lessee, is allowed to graze on the public lands that are subject to a permit or lease. The BLM authorized officer must approve such pasturing agreements. Other types of subleasing arrangements will be considered unauthorized. A surcharge for the lease or sublease of public land grazing privileges associated with base property is not adopted in the final rule.

The final rule provides for the collection of a surcharge for authorized pasturing activities associated with a Federal permit or lease. The final rule provides for a surcharge of 35 percent of the difference between the grazing fee per AUM rate and the prior year's private lease rate for the appropriate State as determined by the NASS for forage used by livestock owned by another party other than the permittee or lessee.

The final rule excludes from the pasturing surcharge sons and daughters of permittees or lessees grazing livestock on public lands as part of an educational or youth program pertaining to livestock rangeland management, or when establishing a livestock herd in anticipation of assuming part or all of the family ranch operation.

Section 4130.8–3, Service charge, is amended to include temporary nonuse and conservation use in the list of items for which BLM may assess a service charge. The service fee will offset the costs of processing such applications.

Subpart 4140—Prohibited Acts

Section 4140.1, Prohibited acts on public lands, is amended to clarify that failure to make substantial use as authorized is a prohibited act, but that approved temporary nonuse, conservation use, and use temporarily suspended are not prohibited acts.

This section also clarifies that it is prohibited to use public lands for grazing without a permit or lease and an annual grazing authorization. Furthermore, mere receipt of a grazing fee bill does not authorize grazing use of the range; the bill must actually be paid. (However, § 4140.1(c) specifically provides for civil penalties only where violations, including unauthorized use resulting from payment by a check that is not honored, are repeated and willful.) The final rule also makes it clear that the permittee is responsible for controlling livestock so cattle do not

stray onto ''closed to range'' areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. The final rule specifies that permittees or lessees are subject to penalties if they violate Federal or State laws pertaining to protection of bald eagles, endangered or threatened species, and wild horses and burros; the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides or other hazardous materials; alteration of stream courses without authorization; pollution of water sources; illegal take; destruction or harassment of fish and wildlife; and illegal removal or destruction of archeological or cultural resources when public lands are involved or affected.

Other changes in the section clarify that it is unlawful to harm livestock authorized to graze on public land, and to interfere with other lawful uses of the land. These provisions include a prohibition on obstructing free transit across public land.

Finally, provisions which specify that violations subject to penalty under § 4170.1–1 are limited to those where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by permit or lease, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, are moved from proposed § 4170–1–3 and incorporated into this final section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1, Violations, is reorganized for clarity and amended to add the requirement that the authorized officer must determine whether a violation is nonwillful, willful, or repeated willful. This clarifies subsequent sections of the rule.

Section 4150.2, Notice and order to remove, is amended to provide authority for the authorized officer to exercise discretion in determining how nonwillful violations will be settled, close areas temporarily for a period of up to 12 months to specified classes and kinds of livestock in order to abate unauthorized use, and allow notices of closure to be issued as final decisions.

Section 4150.3, Settlement, is amended to provide the authorized officer with the authority to consider nonmonetary settlement for unintentional incidental trespasses, in cases when the authorized officer determines the livestock operator is not at fault, when an insignificant amount of forage has been consumed, when damage to the public lands has not occurred, and when nonmonetary settlement is in the best interest of the United States. The method for determining settlement amounts is amended. Settlement for nonwillful violations equals the value of forage based on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in the State in which the violation occurred.

Subpart 4160—Administrative Remedies

Subpart 4160, Administrative remedies, is amended to improve organization, clarify administrative processes and requirements, provide for application of the Departmental rule located at § 4.21 of this title regarding effectiveness of a decision pending appeal and procedures for obtaining a stay, and provide for the issuance of decisions that take effect immediately.

Section 4160.1, Proposed decisions, is amended to clarify that a final decision may be issued without first issuing a proposed decision when action under paragraph 4110.3–3(b) of this part is necessary to protect rangeland resources, or when action is taken under paragraph 4150.2(d) to close an area to unauthorized grazing use. Other provisions clarify the information that must be contained in a proposed decision, and specify that decisions will be served by certified mail or personal delivery.

Sections 4160.1–1 and 4160.1–2 are removed.

Section 4160.3, Final decisions, is amended to clarify the process for filing an appeal and a petition for a stay of a final decision. It provides that decisions will be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA will have up to 45 days to act on the petition. If the petition is granted, the decision will be stayed until resolution of the appeal.

The final rule also clarifies the amount of grazing use that is authorized when a decision has been stayed by OHA. Where an appellant has had no authorized grazing use during the preceding year, the authorized grazing use must be consistent with the decision, pending a final determination on appeal. Where a decision proposes a change in the amount of authorized grazing use, the authorized grazing use during the time an appeal is pending will not exceed the appellant's previously authorized use.

Finally, this section provides authority to the authorized officer for making decisions effective immediately, unless a stay is granted, when it is necessary to protect rangeland resources under the standards imposed by § 4110.3–3(b), or to facilitate abatement of unauthorized use by closing an area temporarily to grazing use under § 4150.2 of this part.

Section 4160.4, Appeals, provides instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, any person whose interest has been adversely affected may file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, OHA is allowed 45 days from the end of the appeal period to review a petition for stay.

Subpart 4170—Penalties

Section 4170.1–1, Penalty for violations, is amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the state in which the violation occurred as supplied annually by the NASS, as well as reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation.

Section 4170.1–2, Failure to use, is amended to provide that if a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation with the permittee or lessee, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

Section 4170.1–3, Federal or State animal control and environmental protection or resource conservation regulations or laws, is removed. The substance of this section is incorporated in § 4140.1(c) of this final rule.

Section 4170.2–1, Penal provisions under TGA, is revised slightly to specify that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500.

Section 4170.2–2, Penal provisions under FLPMA, is amended to adopt the alternative fines provisions of Title 18 U.S.C. section 3571.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1, The fundamentals of rangeland health (titled National Requirements for Grazing Administration in the proposed rule) for grazing administration, are added to establish fundamental requirements for achieving functional, healthy public rangelands. These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards, and habitat for threatened or endangered species or other species of special interest.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1, Fundamentals of rangeland health, are met or significant progress is being made to meet the fundamentals, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Section 4180.2, Standards and guidelines for grazing administration, is added to direct that standards and guidelines will be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs. Once standards and guidelines are in effect, the authorized officer shall take appropriate action as soon as practical, but not later than the start of the next grazing year upon determining that existing grazing management practices are significant factors in failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

Section 4180.2(d) lists factors that, at a minimum, must be addressed in the development of State or regional standards. The guiding principles for the development of standards pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. Section 4180.2(e) lists guiding principles to be addressed in the development of guidelines.

The rule provides that where State or regional standards and guidelines are not completed and in effect by February 12, 1997, the fallback standards and guidelines included in the text of the rule will be implemented. The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles presented in § 4180.2(d). Similarly, the fallback guidelines include grazing management practices while the guiding principles of § 4180.2(e) refer more generally to the types of concerns to be addressed in the development of State or regional guidelines.

Standards and guidelines will be applied through terms and conditions of grazing permits, leases and other authorizations, through AMPs and other activity plans, and through the conditions of cooperative range improvement agreements and range improvement permits. The Department recognizes that rangelands within a given area may be in functional, healthy conditions even though individual isolated sites do not meet the standards or guidelines. However, the Department believes that general failure to meet the benchmarks across a broader area, such as a typical BLM grazing pasture or BLM allotment, would be reliable evidence that the area is not in healthy, functional condition.

IV. General Comments

Numerous comments addressed the overall rulemaking. These comments asserted several central themes which crosscut different sections of the rulemaking. Accordingly, BLM has decided to address these central issues in this portion of the preamble. Within the context of such discussion, particular sections of the proposed and final rules will be referred to as necessary. Nevertheless, in these responses, BLM focuses upon central issues that were of concern to commenters throughout the proposal. Comments that were more specific to a particular section are discussed in the following section entitled Section-by-Section Analysis and Responses to Public Comments.

Rangeland Reform Is Not Needed

Some commenters took the position that general rangeland improvement is unnecessary. Their view was that current legislation, regulations, and procedures provide enough latitude and capability for the government to administer the public rangelands properly, therefore there is no justification for designing and implementing the rangeland improvement program. They stated that the initiative should be dropped or abandoned immediately. They asserted that the government has not shown that the proposal will benefit the western range and many of the elements of the rule are more appropriately dealt with in manuals, instruction memos, and policy guidance.

In addition, the comment was often made that the National Research Council study commissioned by the National Academy of Sciences reports that the conditions of rangeland health in the West are largely unknown. If the conditions are unknown, stated the commenters, it is impossible to demonstrate a need for the proposed rule. Some commenters stated that the entire proposal and EIS were politically driven and did not relate to the resource protection issues of public land administration.

The Department believes that there is a need for changes in public rangeland grazing administration. The Department has been collecting data on the condition of the rangelands for over 60 years. The Department does have considerable information on all BLM lands, based on these years of data collection, although the same level of detailed knowledge may not be available on every allotment. The information available is sufficient to identify trends in rangeland health across the western rangelands.

The status and trends of the western rangelands upon passage of the Public Rangelands Improvement Act (PRIA) in 1978 indicated that western rangelands were producing below their potential and that rangelands would remain in unsatisfactory condition or decline further unless the unsatisfactory conditions could be addressed and corrected by intensive public rangelands maintenance, management and improvement. Congress articulated its view in PRIA that such unsatisfactory conditions on public rangeland present a risk for soil loss, siltation,

desertification, water loss, loss of wildlife and fish habitat, loss of forage for livestock and other grazing animals, degradation of water quality, flood danger, and threats to local economies. In addition, BLM National Public Lands Advisory Council recommended in 1992 that ''* * * foremost consideration needs to be given to protecting the basic components of soil, water and vegetation. Without assurances for the future well-being of these basic natural resources, there is little to squabble about.''

BLM's research has concluded that in the long term under current management practices 22 million acres of BLM uplands would be functioning but susceptible to degradation, and about 20 million acres would be nonfunctioning. The vegetation in some areas would change from potential natural communities to mid seral or late seral stages because of overgrazing, fire, or drought. Conditions would be worse in riparian and wetland areas. The overall trends would be a slow, steady, long-term decline in conditions. Approximately 466,000 acres of riparian areas (43 percent of the total) on BLM land would be functioning but susceptible to degradation, and 219,000 acres (21 percent) would be nonfunctioning. The results of these studies are reported in detail in the FEIS on this rulemaking. These studies show that without some changes in the current program conditions in critical riparian areas would continue to decline.

The program of rangeland improvement responds to the needs of BLM to ensure the efficient administration and management of public rangelands, as well as to the findings expressed by Congress most recently in PRIA, the National Public Lands Advisory Council, and the Western Governors' Association. The program has included and will continue to include significant public involvement. The FEIS associated with the rulemaking examined several alternatives, including continuing grazing administration under current rules and procedures. The impact analysis in Chapter 4 of the EIS demonstrates there would be substantial improvement in riparian areas, uplands, and only slightly reduced forage availability under the alternative adopted today when compared to a continuation of current management.

Some commenters asserted that rangeland improvement is unnecessary because it will not improve the condition of the public rangelands. The Department disagrees. Commenters argued that few permittees or lessees are poor stewards of the public rangelands. They stated that the program will alienate many conscientious ranchers. The commenters asserted that the agencies and public may lose the service and support of these users in maintaining and improving the conditions of the public rangelands, and that rangeland conditions are likely to degrade. Therefore, they claimed, the initiative should be abandoned. However, the Department believes that improving administration of public rangelands will improve their condition, which will benefit all uses, including livestock grazing. This is discussed more fully in the FEIS on this rulemaking.

The standards and guidelines in the final rule are aimed at improving the ecological health of the rangelands. The analysis in the FEIS indicates there will be significant improvements.

The Department recognizes that the majority of public land grazing permittees and lessees are conscientious stewards. However, it also notes that line managers need clear authority and guidance to help correct problems in grazing use and to improve the degraded condition of some areas expeditiously. This program is intended to facilitate cooperation between BLM employees and public land users in making those improvements. Also, by making BLM and Forest Service management more similar, it will be easier for permittees and lessees to comply with land use requirements. Good stewards will not be adversely affected by this initiative and will have an opportunity to work with the Department to sustain the economic vigor of their industry while maintaining or improving the ecological health of the public lands. The Department recognizes that it is in the best interests of the users, the public, and BLM to cooperate in meeting these objectives.

Commenters also stated that the Department has gone through the formalities of public input but has failed to make public the findings and statistics of the letters and meetings. During development of the final rule, the Department considered all comments, and as a result has modified the language of the proposed rule. All comments received are available for review in BLM's administrative record. The section-by-section portion of this preamble explains the changes made to the proposed rule in this final rule.

Rangeland Improvement Is Inconsistent With Current Laws

Conflicts with TGA, FLPMA, and other laws. A number of comments questioned whether the proposed amendments to the grazing rule conflict directly with TGA, FLPMA, PRIA and other related Federal laws. The BLM's main statutory authorities for regulating grazing on the public lands are TGA, FLPMA and PRIA. In TGA Congress directed the Secretary to bring order to the management of the public rangelands and improve range conditions.

Specifically, Section 2 of TGA provides:

> The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts * * * and he shall make such rules and regulations * * * and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *.

The TGA authorizes the Secretary to, among other things, establish fees, issue permits and leases and prescribe terms and conditions for them, issue range improvement permits, and provide for local hearings on appeals. The emphasis on disposal of Federal lands changed with the Classification and Multiple Use Act in 1964 and FLPMA in 1976. In FLPMA Congress articulated the national policy that ''the public lands be retained in Federal ownership.'' 43 U.S.C. 1701. FLPMA also directs that land management be on the basis of multiple use and sustained yield, thus clarifying that other uses of public lands are equally appropriate. FLPMA did not repeal TGA, but did provide additional management direction. For example, section 402 of FLPMA provides that grazing permits and leases shall be:

> [S]ubject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

In 1978 Congress again focused on the public rangelands when it passed PRIA. In Section 2 of that Act Congress found that ''vast segments'' of the public rangelands were ''producing less than their potential for livestock, wildlife habitat, recreation, forage and water and soil conservation benefits,'' and so were considered to be in an unsatisfactory condition.'' Congress went on in Section 2 to reaffirm a national commitment to ''manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values.'' The

Department has concluded that the amendments to the grazing rule are within the statutory authority granted by Congress to the Secretary to administer the public lands under TGA, FLPMA, PRIA, and related acts.

NEPA issues. A number of commenters asserted that the draft EIS was inadequate. The commenters asserted that more local EISs were required. The FEIS prepared for the rangeland improvement program describes the environmental impacts that would result from several proposed alternatives for managing BLM administered rangeland and for changing the fees charged to permittees and lessees. Any subsequent narrower decisions, such as the state or regional standards and guidelines or, if necessary, more local determinations, will tier to the broader national FEIS. Tiering is appropriate when a subsequent EIS or environmental assessment is prepared on an action included in the overall EIS, in this case, the FEIS prepared for the overall program. Additional NEPA analysis will be conducted as appropriate as local or regional decisions are made.

FACA Issues. A number of commenters stated that some of the proposals relating to RACs, especially the provisions regarding task forces of those councils, were violations of FACA. The Department disagrees. The final rules adopted today provide that any subcommittee will report directly to the chartered advisory council. The advisory council will then independently review the input from the subcommittee prior to presenting any consensus advice to the agency. As long as subcommittees report to the agency through the chartered advisory committee, and do not provide advice directly to the agency, their operation is consistent with the requirements of FACA.

Takings. Some commenters asserted that various sections of the proposed rule raise the possibility of a ''taking'' of private property rights without ''just compensation.'' The United States Constitution gives Congress the ''Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' Article IV, § 3, cl. 2. The power includes authority to control the use and occupancy of Federal lands, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them. *Utah Power & Light Co.* v. *United States,* 243 U.S. 389, 405 (1917).

In a series of laws, Congress has delegated primary responsibility and authority to manage livestock grazing on public lands to the Secretary, acting through BLM. The basic laws are TGA, FLPMA and PRIA. In authorizing the issuance of grazing permits in TGA, Congress expressly provided that the ''issuance of a permit * * * shall not create any right, title, interest, or estate in or to the [public] lands.'' 43 U.S.C. 315b. In FLPMA, Congress authorized the Secretary to ''cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions'' of the permit or lease. 43 U.S.C. § 1752(a). The same section also authorizes the Secretary to ''cancel or suspend a grazing permit or lease for any violation of a grazing rule or of any term or condition of such permit or lease.'' These statutes are implemented by BLM's regulations at 43 CFR Part 4100 *et seq.*, including the amendments adopted here.

The Fifth Amendment to the United States Constitution provides in relevant part that no person shall be denied property without due process of law, and no private property shall be taken for public use, without just compensation. This Amendment protects private property. Because Congress made clear in TGA that grazing permits create no private property interest in public lands, the Fifth Amendment's protection is not implicated. The Courts have long held that no taking of private property occurs in the course of lawful administration and regulation of Federal grazing lands because the grazing permit represents a benefit or privilege bestowed by the Federal government upon a private individual and not a compensable property interest under the Fifth Amendment.

Thus, an authorized officer's decision to change permitted use (§ 4110.3), decrease permitted use (§ 4110.3–2), implement a reduction in permitted use (§ 4110.3–3), decrease land acreage (§ 4110.4–2), approve an AMP (§ 4120.2), or approve a cooperative range improvement agreement (§ 4120.3–2) does not give rise to a takings claim.

Some commenters asserted that permittees and lessees should be compensated for any indirect adverse impact that cancellation, nonrenewal, suspension or modification of grazing permits might have on the permittee's base property. While base property is private property protected by the Fifth Amendment, the United States Supreme Court, in an opinion by Chief Justice Rehnquist, specifically considered and rejected the argument that the increment of value added to a private ranch by a public land grazing permit is a compensable property interest, *United States* v. *Fuller,* 409 U.S. 488 (1973).

Even if, in other words, cancellation, nonrenewal, suspension, or changes in the terms and conditions of a grazing permit might have some negative effect on the value of the base property, the Supreme Court has made clear this is not a ''taking.''

Some commenters asserted that the proposal to clarify title to future permanent range improvements on the public lands in the name of the United States constitutes a ''taking'' of private property. The BLM has concluded that proper management of the public lands requires title to permanent improvements on the public lands to remain with the land and be held in the name of the United States. This clarification brings BLM in line with Forest Service policy. This provision is prospective in application; that is, it will not affect ownership or rights that may currently be held in a range improvement. In FLPMA, Congress provided for limited compensation for permanent improvements when a permit or lease is cancelled in whole or in part, in order to devote the public lands to another public purpose, including disposal. 43 U.S.C. 1752(g). To be faithful to this Congressional directive, the amendment requires the authorized officer to retain a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be available for use in determining any compensation owed the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose.

Comments were also received on a proposed amendment to require permittees or lessees, as a term or condition of a grazing permit or lease, to allow BLM reasonable administrative access across non-Federal lands under its control for the orderly management and protection of the public lands. Sometimes, because of the location and configuration of public and non-Federal lands, BLM personnel need reasonable access across non-Federal lands under the control of permittee or lessee to access Federal land in order to carry out its management responsibilities on public land. Providing for such access is a reasonable condition to attach to the permit or lease authorizing livestock grazing on public lands.

Administrative appeals procedures. Many commenters raised questions of fairness and appeals; many of these commenters referred to these as ''due process'' issues. The existing administrative and applicable judicial protections afforded permittees and

lessees pertaining to the issuance, modification, suspension, cancellation, renewal and general administration of grazing permits and leases will continue. For example, some commenters read the proposal to amend § 4.477 to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. A permittee will not have to choose between an appeal and requesting a stay. Both will be available.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Departmental procedures for other types of appeals. Any person whose interest is adversely affected by a decision of the authorized officer has full appeal rights. Standing to maintain an appeal will continue to be determined by OHA. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), BLM will issue proposed decisions, which may be protested. Except in situations where immediate action is needed for resource protection in accordance with the standards set for in §§ 4110.3–3(b) and 4150.2(d), no decisions will be effective until after the 30-day appeal period. The applicant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision may be temporarily stayed for up to 45 days after the end of the 30-day period for filing an appeal while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal. Finally, parties have the option to seek administrative or judicial review of a decision that is put into immediate effect.

V. Section-by-Section Analysis and Responses to Public Comments

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would have revised the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160, and would also have removed other references to suspension of the decision of the authorized officer upon appeal.

Comments on this section addressed several major issues. Some commenters asserted that the proposal did not provide adequate opportunity for administrative appeals and violated various statutory provisions. Some read the proposal to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. Other commenters were concerned about possible fiscal impacts of the provision. Other commenters stated that the proposed provision would speed implementation of needed grazing decisions.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Department procedures for other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. Any person whose interest is adversely affected by a decision of the authorized officer still has full appeal rights. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), decisions will not be in effect until after the 30-day appeal period. An appellant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision will be temporarily stayed for up to 45 days after the end of the period for filing an appeal (for a total of up to 75 days) while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal.

The provision will not require an appellant to choose between this process and the hearing on the evidence granted by TGA. The hearings referenced in this provision do include a review of the evidence on the case. A permittee will not have to choose between having such a hearing and requesting an appeal. Both will be available.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed. The phrase ''pertaining to the period during which a final decision will not be in effect'' is added to clarify that the reference to § 4.21(a) relates to those specific provisions.

Part 1780—Cooperative Relations

Section 1784.0–5 Definitions

The proposed section would have replaced the term ''authorized representative'' with ''designated Federal Officer'' to make the terminology of the rule more consistent with the terminology of FACA and 41 CFR 101–6.1019.

The Department received very few comments on this initial section of the discussion of cooperative relations. The most common issue raised was the abolition of grazing advisory boards (GABs). This issue is covered below under the discussion of § 1784.6–5.

Some comments suggested that the change from ''authorized representative'' to ''designated Federal officer'' was designed to give greater authority and stature to Federal personnel.

Each RAC or other advisory committee will have a ''designated officer of the Federal Government,'' as required by section 10(d) of FACA, who will chair or attend each meeting. The regulations implementing FACA, 41 CFR subpart 101, use the term ''designated Federal officer'' and prescribe the authority and responsibility of that position. As required by FACA, this officer will call the meetings of the committees and will develop the agendas of the meetings.

In accordance with the above discussion, the Department has concluded that the final rule will include these changes as proposed, because it intends that cooperative relations be conducted in conjunction with FACA and the language and requirements of this final rule should be consistent with FACA.

Section 1784.2–1 Composition

Under the proposed rule, this section would have been amended by eliminating paragraph (b), and amending existing paragraph (c), which is redesignated new paragraph (b). Previously, paragraph (b) established an eligibility requirement for grazing advisory board members. This requirement would no longer have been necessary with the discontinuance of the grazing advisory boards.

New paragraph (b) would have added to existing education requirements for committee membership new requirements that individuals can qualify to serve on advisory committees if they have experience or knowledge of the geographic area covered by the committee, and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Many commenters expressed confusion about the Department's use of the terms ''board,'' ''council'' and ''committee.'' In this final rule, ''council'' is used to refer exclusively to the RACs. ''Committee'' is used in §§ 1784.0–5, 1784.2–1, 1784.2–2, 1784.3, 1784.5–1, and 1784.5–2. These

sections have application to all types of advisory committees, not just RACs. A RAC is a type of advisory committee. Sections 1784.6–1 and 1784.6–2 concern RACs. ''Board'' is not used in this final rule.

Many commenters on this section supported the concept of broadening membership on the councils. Commenters noted that because useful knowledge and expertise is widely distributed in society, membership of advisory committees should be broadened to take advantage of this.

Some commenters specifically objected to changing this section. There were a number of comments about the specific composition of the councils. Most of these comments were also addressed to subsequent sections, especially § 1784.6–1. Since these comments related to the Department's proposals concerning the makeup of the RACs, they are discussed under that section, below.

Some commenters made an identical suggestion to change the last clause of § 1784.2–1(b) by striking the requirement that council members have ''demonstrated a commitment to collaborate in seeking solutions to resource management issues.'' One comment stated that commitment without necessary concurrent expertise is useless, and that accommodation for regional differences in a broad range of specific information on each area should be a necessity. A number of commenters questioned who or what should determine adequate experience, and others suggested a better definition was needed.

A commitment to collaborative decisionmaking is critical to the success of these committees. The Department has concluded that the final rule will adopt the proposed language requiring both appropriate expertise and a commitment to collaborative decisionmaking, because such a balance is the best way to assure the success of any advisory committee.

FACA requires that the head of an agency appoint members to any committee providing consensus advice to the agency. In the case of RACs, the Secretary must appoint members. In making final selections of RAC members, the Department will make determinations as to what is adequate experience. Since geographic areas covered by individual RACs will be highly variable it would be difficult to define this term too narrowly without unduly limiting the flexibility which will be needed to ensure that each council includes members who will represent a broad range of interests and make a substantive contribution to the committee's deliberations.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 1784.2–2 Avoidance of Conflict of Interest

In the proposal, paragraph (a)(1) of this section would have been amended to allow permittees and lessees to serve on any advisory committees, including RACs and their subgroups. This change would have been made to ensure that permittees and lessees, as important stakeholders in the management of public lands, could provide input to advisory committees so that the committees would have been able to develop recommendations based on direct community and user input. Paragraph (b) would have clarified that no advisory committee member could have participated in any matter in which the member had a direct interest. The proposal included a new paragraph (c), which would have provided that members of RACs have to disclose their direct or indirect interest in Federal grazing permits or leases administered by BLM.

The Department received many comments on this section. Many commenters believed the conflict of interest provisions applied only to ranchers, and stated that such provisions were unfair and should apply to all members of the councils. Many commenters spoke to the membership of environmentalists on the councils. Commenters asserted that environmental groups have a direct conflict of interest. Some asserted that all users of specific areas have an interest in that area, and should be excluded from serving on a council studying the situation in that area. Commenters stated that allowing members of national or regional environmental groups to serve violated the local concept of the RACs.

A number of commenters asserted that permittees or lessees who were involved in an issue should be involved in the process, so they would have ownership of or support the solution developed in a RAC. Others suggested that since permittees and lessees are bound by the terms and conditions of their permits or leases, and by the provisions of AMPs, it would seem only proper to allow permittees or lessees on a council to provide input into the management decisions which will affect that grazing allotment. One comment suggested that individuals with an interest in an issue should be allowed to participate in the discussions of the issue, but should be excluded from any voting required.

Another commenter provided a suggested definition of indirect interest that includes any situation in which outside interests, of whatever nature, might lead to substantial interference with or disregard for a duty of serving on a grazing council or committee.

Commenters challenged the legal basis for a conflict of interest provision. They asserted that if it is based on the Ethics in Government Act, that the law is limited to Federal employees or paid advisors, and that ethical standards under Federal law are not limited to financial gain but include the use of one's official position to promote a personal viewpoint.

''Conflict of interest'' is an accepted legal concept that generally refers to ''a clash between public interest and the private pecuniary interest of the individual concerned.'' (Black's Law Dictionary, 5th Edition, 1979, p. 271). The concept applies to situations where a committee member, who is serving a public interest, has private financial interests that might conflict with his or her public role. This would include holding a permit that might be impacted by the deliberations of a RAC.

The provision does not apply only to permittees or lessees. It applies to all advisory committee members. The provision does not apply to situations in which an individual's interest in the deliberations of a committee is not financial. The provision does not refer to cases where an individual has a membership in an organization that is in litigation with the government, unless the individual has a pecuniary interest in the outcome of the litigation. Furthermore, it does not refer to cases where an individual might develop reports for another organization that in turn might influence agency decisions.

Permittees and lessees were specifically mentioned in this provision to draw attention to the fact that the proposed rule *broadened* the opportunities for participation by such persons. Under the previous regulations at § 1784.2–2, permittees and lessees normally would have been prohibited from serving on any committees advising BLM except for grazing advisory boards. Under the provision adopted today, permittees and lessees can participate on the broader based RACs or on any other advisory committee.

The concepts of ''direct'' and ''indirect'' interest refer back to the basic principle of conflict of interest, and refer to financial matters. Both terms are defined in common usage. ''Direct'' interest refers to an interest

which is certain, not in doubt or contingent on some other factor. ''Indirect'' interest refers to an interest contingent on another factor, or through a third party. In the case of permittees, an indirect interest will generally be an interest in a permit or lease that is through a third party, such as a child, spouse, business partner, or other affiliate.

The rule as finalized allows permittees and lessees with financial interests to serve on committees, thus broadening the base of advice available to the Department. This provision simply requires *disclosure* of interests by advisory committee members, and prohibits them from participating in *specific matters* in which they have such interests. It does not prevent persons with a legal interest from serving on committees.

Comments concerning application of conflict of interest provisions caused the Department to reexamine the types of interests that would have to be disclosed by committee members. In the final rule, as detailed below, the Department has expanded the list of interests that might be held by persons who might serve on RACs and which must be disclosed.

In the final rule, the Department has sought to correct any confusion between the terms ''council,'' ''committee,'' and ''board,'' as discussed at § 1784.2–1. Conflict of interest provisions apply to *all* advisory committees that advise the Department as well as to the RACs.

In accordance with the above discussion, the Department has concluded that the final rule should adopt a modified version of the proposed rule. Modifications have been made to ensure consistency in the use of the terms ''council'' and ''committee,'' and for consistency with other changes to the proposal regarding the structure of RACs, discussed below under §§ 1784.6–1 and 6–2. Additionally, the word ''multiple'' is eliminated in this section, and in all subsequent sections. The Department has made this decision to simplify the name of the councils.

In final paragraph (c), the phrase ''leases, licenses, permits, contracts, or claims which involve lands or resources, or in any litigation which involve lands or resources administered by the Bureau of Land Management,'' is substituted for the phrase ''Federal grazing permits or leases.'' This last change is made for consistency with the principle that this provision applies to *all* types of financial interests. The phrase adopted is consistent with that in existing paragraph (a) of this section. While persons who hold such interests will still not normally be allowed to serve on advisory committees, except for the general exception introduced by this rule for grazing permittees or lessees, under special circumstances such a person may serve on a committee. In such case, the person would be required to disclose his or her interests.

Section 1784.3 Member Service

The proposed rule would have established that appointments to advisory committees would have been for two-year terms unless otherwise specified in the charter. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments, terms and election procedures, would have been removed.

Also, the provisions for reimbursement of committee members' travel and per diem expenses would have been modified to make clear that individuals selected by committees to provide input, but who themselves are not appointed committee members, would not have been eligible for reimbursement. This provision was necessary to limit costs.

Several comments were received on the charters and chartering process for advisory committees. Some comments indicated that as proposed, the changes would create the need for a new charter for each committee which would result in a lack of continuity in committee functioning.

Today's action amends the general advisory committee regulations found at 43 CFR Subpart 1784. These general regulations contain standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary and BLM on matters relating to public lands and resources under the administrative jurisdiction of BLM. The proposed amendments must comply with the requirements of FACA. Thus the Department's discretion is limited by the terms of FACA.

FACA directs that advisory committees shall terminate within two years of establishment, unless renewed. At the time of renewal a new charter must be filed. The Department expects that charters will look substantially the same each time they are renewed, although changes may be made if experience suggests revisions are needed. The charter will meet the requirements of FACA, but will be relatively general in nature. Charters will include provisions such as council purpose and responsibilities, membership requirements, and terms of appointments. Bylaws may be prepared by individual councils if needed to provide additional procedural guidance.

Many comments were received on membership service and tenure. Comments included the following: a public official's term on a committee should coincide with the term of office, vacancies should be filled in the same manner as positions were originally filled, members should be selected on the basis of merit, and membership should be staggered to achieve continuity. Several comments suggested that members should serve for longer than two years so they would become familiar with issues. Some comments indicated that two-year limits should be established. Other comments supported the view that charters should allow lifetime membership. Some comments suggested that members should be elected. Some of these comments suggested that members should be elected by grazing permittees and lessees.

Under FACA, the Department has some discretion regarding the terms of service for members. Generally, member terms are coterminous with the term of the charter. The Department intends to follow this general practice with RACs, except where special circumstances require otherwise. For example, the Department intends to appoint initial members to staggered terms, so members' terms will not all terminate in the same year. This ensures that there will always be experienced members on a council. The Department expects that some members will be reappointed, providing additional continuity to the councils. These practices have been used successfully in the past.

As explained in the discussion of § 1784.2–1, appointments to the advisory councils will be by the Secretary, as required by FACA. Secretarial appointment is also required by FLPMA. The Department will seek nominations from Governors, interested groups and private citizens. Members will qualify to serve on advisory committees because their education, training, or experience enables them to give informed and objective advice on matters of interest to the committee. Decisions about replacing members appointed to fill the position of the local elected official when the member's elective term expires will be made on a case-by-case basis. Existing paragraph (b)(2), which by today's action is redesignated (a)(2), provides for filling vacancies occurring by reason of removal, resignation, death, or departure from elective office. Such vacancies are to be filled using the same method by which the original appointment was made. Under existing

paragraph (b)(1), which by today's action is redesignated (a)(1), BLM must replace members of committees who are serving in the elected official position, and who leave office. It may be possible in some cases for the member to continue to serve on the council in another appointed position.

Comments were received both for and against BLM payment of travel and per diem for council members. Some comments suggested that members should volunteer their time and expenses and some comments suggested that non-resident members should pay for their own travel. Other comments questioned whether advisory committee costs would escalate over time and whether councils would be in session all of the time. One comment questioned why members of resource area councils should be reimbursed, but not rangeland resource teams or technical review teams, and suggested that BLM establish technical teams and reimburse the technical team members.

FLPMA (43 U.S.C. § 1739), as amended by PRIA (43 U.S.C. 1908), requires establishment of advisory committees representative of major citizen interests concerned with resource management planning or the management of public lands. The RACs will fulfill this requirement. Section 309 of FLPMA provides that ''members of advisory councils shall serve without pay, except travel and per diem will be paid each member * * *'' Regulations at 43 CFR subpart 101, Federal Advisory Committee Management, also allow payment of travel expenses and per diem.

The objective of RACs established under these regulations is to make available to the Department and BLM the advice of knowledgeable citizens and public officials regarding both the formulation of operating standards and guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment. The Department has concluded that to ensure broad and regular participation by members, it will continue to compensate advisory committee members for travel and per diem expenses. The Department does not anticipate that operating these committees will generate a need for substantial increases in Federal funds in the future. In any event, funding is subject to future review in the budget and appropriations process. Moreover, advisory committees are required under FLPMA and the Department has concluded the committee structure adopted in the rule will reap tangible rewards in improved land management and increased cooperation among stakeholders.

The Department anticipates that the localized teams will be in existence for limited time periods and will focus on fairly narrow issues. As a result, the Department has concluded that members of these teams who are not also members of the parent advisory council will not be reimbursed for travel and per diem. The Department is also making the decision not to reimburse expenses of these localized teams in order to limit the expenses incurred by BLM and the Department. However, the final rule allows BLM to constitute a special function subgroup such as a technical review team and reimburse RAC members for travel expenses. In addition, the Department has the authority to purchase services in support of an advisory council, and on occasion may do so.

In accordance with the above discussion, the Department has decided to adopt a version of the proposed rule. Several minor changes are made in paragraph (d). All of these changes are intended to clarify that this section applies to all advisory committees, not just RACs. References to resource review teams and technical review teams are omitted from the final version of the rule for that reason, and for consistency with the models of RACs finalized today in §§ 1784.6–1 and 6–2. Those terms are replaced with a more general reference to ''subgroups.''

Section 1784.5–1 Functions and Section 1784.5–2 Meetings

These sections would have been amended by replacing the term ''authorized representative'' with the term ''designated Federal officer.'' These changes would have provided consistency with the terminology of FACA.

No comments were received that pertained solely to these sections. The Department has decided to adopt this provision as proposed.

Section 1784.6–1 National Public Lands Advisory Council, Reserved Sections 1784.6–2 and 1784.6–3, Section 1784.6–4 District Advisory Councils, and Section 1784.6–5 Grazing Advisory Boards

References to the National Public Lands Advisory Council, district advisory councils and grazing advisory boards would have been removed in their entirety and replaced with three new sections that would have established multiple resource advisory councils and associated input teams. Sections 1784.6–4 and 1784.6–5 would have been removed. Reserved sections 1784.6–2 and 1784.6–3 would have been replaced by new sections.

No comments were received on the proposals relating to §§ 1784.6–2 and 6–3. A number of comments were received concerning §§ 1784.6–4 and 6–5. Comments directed to § 1784.6–1 have been addressed below in the discussion of the new provisions in that section.

Many commenters stated that the grazing advisory boards' members had both knowledge of and an interest in the land. Some commenters who supported establishment of the RACs stated that the grazing advisory boards should also be retained; others stated that the grazing advisory boards should be abolished.

Grazing advisory boards have served a useful purpose in providing the Department with valuable input from permittees regarding grazing issues. However, the statutory provision in FLPMA, section 403, establishing grazing advisory boards expired by its own terms on December 31, 1985. Since then, the boards have been authorized only by Secretarial order. For several reasons, the Department has concluded that it will proceed with its proposal to abolish the boards and to rely on one general form of advisory committee, the RACs. While grazing advisory boards have been useful, the Department believes that more collaborative public rangeland management requires a broader scope of interests advising BLM. The function of grazing advisory boards, as defined by FLPMA, was limited to making recommendations to management concerning the development of AMPs and the utilization of range betterment funds. While grazing advisory boards may have included some individuals not involved in grazing, this was not uniformly the case. RACs will address a full range of resource management issues, including AMPs and planning for the expenditure of range betterment funds and will broaden public involvement in the process.

All groups that provide advice to the Federal government are subject to the requirements of FACA, unless specifically excluded by statute. FACA specifies a series of requirements for committees and other bodies advising the Federal government, including that they be balanced in terms of representation, have notices of meetings published in the **Federal Register** and be open to the public, keep various types of records, and implement other procedural safeguards that will assure public involvement in resource management issues. The Department believes it is important that management of the public rangelands

involve a wide range of public involvement. To achieve this, and to comply with FACA, the Department has concluded that grazing advisory boards should be abolished and RACs created.

In accordance with the above discussion, the Department has concluded that the final rule should adopt provisions as proposed because these provide the best alternative for promoting cooperative relationships in resource management.

Section 1784.6 Membership and Functions of Resource Advisory Councils and Council Subgroups

In the proposal, the title of this section would have been changed for consistency with subsequent changes in §§ 1784.6–1 through 6–3. It would have referenced multiple resource advisory councils (MRACs), as well as rangeland resource teams and technical review teams.

A few comments were addressed to this section, but covered issues relating to the substance of the following sections. They will be discussed under the pertinent sections below.

Because the Department has concluded that the final rule should adopt a more flexible model for public participation than was envisioned in the proposal, it has changed this title to reflect the three model version of RACs adopted in final rule §§ 1784.6–1 and 6–2. References to rangeland resource teams and technical review teams are changed to ''subgroups'' for that reason, and ''multiple'' is omitted from the name of the RACs, as discussed at § 1784.6–1.

Section 1784.6–1 Resource Advisory Councils—Requirements

Under the proposed rule, this section would have provided for the establishment of MRACs. One MRAC has been established for each BLM administrative district except when prohibited by factors such as limited interest in participation, geographic isolation in terms of proximity to users and public lands, or where the configuration and character of the lands is such that organization of councils along BLM district boundaries is not the most effective means for obtaining advice on the management of all the resources across an entire area. The exceptions would have been intended to provide for situations such as those encountered in Alaska where it is difficult for interested persons to participate because of extreme travel distances, or situations where management of neighboring BLM districts or portions of districts involving similar lands can best be served by organizing an MRAC along boundaries other than BLM district administrative boundaries. The determination of the area for which an MRAC would have been organized would have been the responsibility of the affected BLM State Director. Organization by ecoregion boundaries would have been encouraged where appropriate. The Governors of the affected States and established MRACs could have petitioned the Secretary to establish an MRAC for a specific BLM resource area.

MRACs would have provided advice to BLM officials to whom they report regarding the preparation, amendment and implementation of land use plans. The councils would also have assisted in establishing other long-range plans and resource management priorities in an advisory capacity. The Department intended that this would have included providing advice on the development of plans for range improvement or development programs and included in the proposed amendments to 43 CFR subpart 4120 a requirement for consultation with MRACs in the planning of range improvement or development programs. MRACs would not have provided advice on personnel management, nor would they have provided advice on the allocation and expenditure of funds subsequent to budget planning.

Appointments to MRACs would have been made by the Secretary. In making appointments, the Secretary would have considered nominations from the Governor of the affected State and nominations received in response to a public call for nominations. The Secretary would have encouraged Governors to develop their nominations through an open public process. In reviewing nominations submitted by the Governors, the Secretary would have considered whether an open public process was used. All nominations would have been required to be accompanied by letters of recommendation from interests or organizations to be represented that are located within the area for which a council is organized.

The Secretary would have appointed 15 members to each MRAC. Five members would have been selected from persons representing commodity industries, developed recreational activities, or the use of public lands by off-highway vehicles; five would have been selected from representatives of nationally or regionally recognized environmental or resource conservation groups and wild horse and burro interest groups, from representatives of archeological and historical interests, and from representatives of dispersed recreational activities; and five would have been selected from persons who hold State, county, or local elected office, and representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands. The proposed rule would have required that at least one of the members appointed to each council must hold elected State, county, or local office. An individual would not have been allowed to serve on more than one MRAC at any given time.

The proposed rule would have required council members to have demonstrated experience or knowledge of the geographic area for which the council provides advice. It would have required that all members of MRACs attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. This requirement was intended to ensure a common general understanding of the resources management principles and concerns involved in management of the public lands.

The proposed rule would have provided that an official meeting of an MRAC required at least three members from each of the three broad categories of interests from which appointments were made. Formal recommendations of the council would have required agreement by at least three members of each of the three broad categories of interests that attend an official meeting.

MRACs would have had the option of requesting a Secretarial response where the MRAC believed its advice had been arbitrarily disregarded by the BLM manager. If requested, the Secretary would have responded directly to a council's concerns within 60 days. Such a request would have required agreement by all 15 members. The Secretary's response would not have constituted a decision on the merits of any issue that is or might become the subject of an administrative appeal and would not have precluded an affected party's ability to appeal a decision of the authorized officer.

The Department received many comments on this section of the proposal. Many commenters were opposed to the abolition of the grazing advisory boards. Comments on the grazing advisory boards have been covered above in the discussion of § 1784.6–5. Many were opposed to the formation of the MRACs. Others said that the proposed system was in direct conflict with the requirements for BLM

to coordinate with State and local government in the decisionmaking process because the new system would be unwieldy and expensive. Some commenters stated that the councils would not bring about significant changes in the health of our public lands, but would perpetuate local control of public lands.

Other commenters were opposed to the MRACs because they said that the Federal agencies were being paid to manage the public land for public benefit, and they should do so. Some commenters charged that the Department was trying to subordinate or eliminate its legal obligations under sections of PRIA. Others stated that the public is involved in range decisions through the NEPA process and so MRACs were unnecessary.

Many commenters supported establishment of the MRACs. A typical comment stated they were an improvement over the grazing advisory board system. Several of the commenters who supported establishment of the councils suggested they be tried on an experimental basis.

Many commenters spoke to the make-up of the MRACs. Most of these commenters stated that ranchers would be under-represented. Some pointed out that the practical, ecological and managerial knowledge of permittees is essential, and that therefore they should be a required component. Some suggested that council membership should reflect the major users of the land in each specific area.

Some commented that it was discrimination to require environmentalists to be members of national organizations. Others said it was unfair to exempt the staffs of environmental organizations from the residency requirements which they believed were imposed on all other council members.

Many commenters spoke to participation of government employees on the councils. Some supported such participation especially by representatives of State wildlife agencies. Others were opposed to participation by government employees because they believed BLM would coordinate with such agencies anyway, and the councils should be for the government to get public input.

Some stated that prospective members should be supported by letters of recommendation from individuals and local associations of the area they would represent. Others specifically were opposed to the requirement for letters of recommendation. Commenters said that to require letters of recommendation from ''local interests'' would prevent the councils from being balanced and violates FACA. One comment stated that because salmonids were so important in many areas, someone on the council should be knowledgeable of salmonids.

Other comments regarding membership addressed lending institutions, academicians, Indian tribes, and other specific groups.

Many commenters said that it was important for the MRACs to be made up of people who had local interests and knowledge, and stated that all members should be local. Other related comments addressed the need for local expertise, a financial stake in the land, and other factors. Some asserted that council members must share a primary commitment to improving grazing as a land use. Some of these same commenters asserted that all members should be required to demonstrate their knowledge of rangeland, vegetation, and livestock management, or related areas.

Many commenters were concerned with the process of selecting members. Suggestions included that members be elected by the permittees, or appointed by the county commissioners or the Governor. Others objected to their being appointed by the Governor or by the Secretary. Many commenters objected to self-nomination of individuals to the MRACs.

A number of commenters spoke on operation of the MRACs. Some stated that no expenses should be paid. Some suggested that strict standards on conduct and meetings should be developed to prevent one interest from dominating. Others suggested that recommendations from the local council should have some jurisdiction over the actions of the Federal land management agency. Some commenters stated that the provision prohibiting councils from providing advice on funding and personnel matters was too restrictive. Some objected to the Secretarial appeal provision. Several asked whether the MRACs would give recommendations or advice, or suggested that the advisory council serve as a reviewer of proposed decisions of the authorized officer. Some commenters raised a concern about the development and content of the charter, and about evaluation of the councils. Others were concerned about the requirement for consensus because they thought it would result in a serious delay in decisionmaking.

Some commenters spoke to the jurisdiction of the MRACs and how that would be determined. A number stated they should be based on BLM districts or on ecoregions. Some objected to the State Director being authorized to determine the area covered by a council.

A number of commenters spoke to council size. Some stated they were too large, a few thought they were too small. Some stated that the basic principle should be balanced and broad representation of public concerns, not a specific number. A number of specific recommendations for MRAC membership and size were made.

Numerous substantive suggestions were made for the course of study. Other comments included a statement that the proposal differed in several material respects from the products of the Colorado Working Group. Some commenters suggested that various terms be defined including ecosystem, biodiversity, environmentalist, rangeland ecosystem, historical and archeological interests, direct interest, dispersed recreational activities, insufficient interest, unbalanced viewpoint, nationally or regionally recognized, and ecosystem boundaries. Some commenters suggested that the MRAC should take no actions to which the permittees or lessees involved did not agree.

The Department's decisions to form the RACs and to abolish grazing advisory boards have been discussed at § 1784.6–5, as is the need for greater public involvement than that provided by the grazing advisory boards. General requirements of FACA, which have dictated a number of the provisions adopted today, are discussed at § 1784.2–1, Composition. Under the requirements of FACA, members of committees advising the Federal government must be appointed by the head of the agency, in this case the Secretary. State and local government will be included in the process through representation on the RACs, as well as being consulted on numerous specific types of decisions, such as on designation or adjustment of allotment boundaries (§ 4110.2–4), increasing permitted use (§ 4110.3–1), implementing reductions in permitted use (§ 4110.3–3), development of AMPs (§ 4120.2), and other BLM decisions. *See* the discussions below on those sections for additional information.

The Department has concluded that the new system will be workable and neither unwieldy nor excessively expensive. Obtaining input from all interested parties on BLM decisions early in the process will in the long run reduce objections and appeals. The Department anticipates that this will not only expedite implementation of agency actions, but concurrently will reduce overall rangeland management expenses by making the program more efficient. For example, the Department does not expect travel expenses to be

significantly greater than they were for the grazing advisory boards, particularly with the addition of a residency requirement. The issue of costs of advisory committees is discussed further at § 1784.3, Member service.

The system will not necessarily be a multilevel structure. Under the provisions adopted today, only the RACs themselves will be required. The other subgroups will be discretionary. While the groups will be local, in a broad sense, the Department believes that providing for diverse participation through implementation of the provisions adopted in this section of the final rule will ensure that all interests are fairly represented. Furthermore, the requirement for consensus, which is retained in the final rule, will ensure that the three groups represented will have an equal say in making decisions, and no one interest will be isolated by majority vote.

The Department acknowledges that it is the responsibility of BLM to manage the public grazing lands. However, several different statutes, including FLPMA, PRIA, and NEPA, call for public participation in decisionmaking processes regarding such programs. A purpose of these RACs is to facilitate such participation, and their formation and structure is fully consistent with those legal requirements. While there may be some initial complications in establishing the RACs, the Department believes that they are critical to long-term improvements in the management of our public grazing lands. For that reason, the Department has decided not to try them on only an experimental basis. The Department has carefully considered the structure and functions of the MRACs. In response to the concerns about under representation of grazing interests, the Department agrees that, to the extent possible, the make-up of the commodity group on the council should reflect the distribution of commodity interests in the area represented by the specific council. For example, if approximately 3/5ths of the commodity interests in an area are grazing operators, 1/5th are timber harvesters, and 1/5th are miners, the commodity group on the council should include 3 permittees or lessees, 1 timber harvester, and 1 miner. Such a distribution will ensure that the necessary expertise is present to deal with technical issues which might come before a council representing that specific geographic area. While the Department does not agree that it is necessary or desirable to specify this in the text of the rule, since in some cases it may be impossible to achieve these optimal numbers, the Department will strive to arrive at this outcome during the appointment of council members.

Under the rule adopted today, environmental members will not have to be members of national groups. All nominees to the RACs will be required to have letters of recommendation, but because the final rule requires residency in one of the States within which the area to be covered by the council is located, the letter need not come from a local source. These requirements apply equally to all council members, environmentalists as well as commodity interests. Additionally, all members will be required to have some expertise or knowledge that will be useful to a council's deliberations.

The Department agrees that representatives of other Federal agencies should not be members of the RACs. Other Federal agencies are normally consulted about issues that affect them through other formal processes and do not need to be provided access through the RAC structure. However, under FACA, each council must have one ''designated Federal official'' present at each meeting. State agencies are a different matter. While it is true that BLM will coordinate on many issues with State agencies, nevertheless the Department believes it will be useful, in some cases and depending on local circumstances, to include State employees on the RACs. However, in the final rule, the Department has revised the discussion of the third group to limit participation of State employees to representatives of State agencies responsible for managing land, natural resources, or water.

The Department believes that the requirement to have broad representation from the three groups specified in this section of the final rule is a reasonably specific provision. It is not feasible to specify in more detail exactly what types of persons should be selected to ensure such representation. That is a decision that will have to be made on a case-by-case basis, depending on the nature of the population in an area covered by a RAC, and on the specific types of interest groups present in that area. The Secretary, based in part on nominations from the Governors, will strive to ensure that each RAC is fairly representative of those groups. Certainly, in many cases, tribal representatives should—and will—be included on the councils. The provisions of this section of the final rule allow inclusion of mining, timber, and other interests. However, this section deals specifically with the RACs that will be formed to provide advice on the public lands grazing program, and it is not appropriate to specify requirements related to the mining or timber industries here.

The Department does not agree that lending institutions should be specified as a group to be represented on all RACs. Of course, persons from such institutions could serve on the councils as representatives of the local public, local elected officials, or other interests listed in this section of the final rule. Similarly, academicians are listed as possible members because of their ability to contribute to technical discussion of rangeland issues. Therefore, the Department believes it is appropriate to limit membership of academicians, per se, to those involved in the natural sciences. However, an academician with some other specialty could participate as a member of the local public, as a representative of one of the other specified groups. Academicians who are not in the natural sciences are not prevented from serving on the councils.

The Department agrees that local expertise is essential to effective councils. The rule adopted today requires that members of RACs, rangeland resource teams and other local general purpose subgroups must reside in the State, or one of the States, within the jurisdiction of the council or subgroup. Additionally, the rule requires demonstrated knowledge of the geographic area. The Department does not agree that national environmental groups should be excluded, but again, representatives of such groups should have local knowledge and meet residency and other membership criteria.

Furthermore, the Department does not agree that all members should have a financial stake in the land or pay user fees. Anyone with a genuine interest in the management of the public lands, and with expertise to make a contribution, should be eligible to be considered for council membership, so long as the person meets other membership criteria.

Similarly, the Department does not agree that council members must share a primary commitment to improving grazing as a land use. While clearly the councils should provide advice on improving the grazing uses of the land, and grazing expertise will be an important component on the councils, many other issues are legitimate concerns, including non-grazing uses of the public rangelands. This is consistent with BLM's responsibility to multiple resources and uses.

Issues regarding selection of members have been discussed at § 1784.2–1, Composition. The Department believes that self-nomination is an appropriate

method of identifying individuals with an interest in the management of the public lands. All nominations must be accompanied by letters of reference from interests or organizations to be represented. The Secretary will not be able to appoint to the councils all individuals who are nominated, either by themselves or by other groups. During the selection and appointment process, the Department will strive to establish council membership that represents the three groups in a balanced fashion, and that includes only members who meet the requirements to be informed, objective, knowledgeable about the local area, and committed to collaborative decisionmaking.

Issues concerning payment of per diem to council members have been discussed at § 1784.3, Member service.

The Department believes that the requirements for consensus decisionmaking and balanced membership will prevent one group from dominating the councils. Issues such as rules of operation can be handled by the individual councils after they are constituted, as long as they fulfill the requirements of FACA and this rule. The councils cannot legally be given jurisdiction over the actions of the Federal land manager. While the Department expects that the recommendations of the councils will be carefully considered by local Federal managers, ultimately the Federal agency remains responsible for all decisions made.

BLM is constrained legally in many matters regarding personnel or funding. The BLM could not be bound by advice from the RACs on such matters. However, some funding matters clearly can be considered by the councils. For example, expenditure of range improvement funds will be considered. By advising the agency on priorities, the RACs may impact the expenditure of other funds as well.

The councils cannot appeal to the Secretary, but they can request Secretarial response, under the provisions of § 1784.6–1(i) of the final rule. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

While any interested person can provide input to the charters, the Department will be responsible for establishing a charter for the advisory councils. These charters must be consistent with the requirements of FACA, and must be reviewed by the General Services Administration and approved by the Office of Management and Budget. Definition of the groups to be represented on each council in the charters must be consistent with the requirements of § 1784.6–1(c). Specific operating procedures for each council can be developed by that council and incorporated into a set of bylaws or other operational instrument. Development of the charter and issues of the councils giving advice or recommendations are also discussed above in § 1784.2–1, Composition. The Department rejects the suggestion that permittees not be bound by the recommendations of the councils unless they agree in writing. The councils will provide recommendations to BLM, not directly to the permittees. Furthermore, the councils provide only advice. They do not make decisions. It is the statutory responsibility of BLM, through the authorized officer, to make final decisions regarding the management of the public rangelands. Permittees and lessees will be bound to follow those decisions, subject to the administrative remedies provisions in subpart 4160.

The Department understands that it may in some cases be difficult to achieve consensus, and that the development of consensus may be a time-consuming process. However, consensus decisionmaking is at the heart of improving the grazing management program. The Department is committed to the concept that all groups should work together to develop recommendations regarding the management of the public rangelands. Decisions reached in this way will be owned by all parties involved, and there will be significantly less likelihood of appeals and disputes, and greater likelihood that effective actions will be identified and implemented. In the long run, the Department believes that consensus-based decisionmaking will actually shorten the time required to reach a decision and implement it on the ground.

In response to the comments on jurisdiction, the Department has decided to allow considerable flexibility in the area covered by any one RAC. To that end, and to provide flexibility in other aspects of the RACs so they can be constituted to suit local needs, the Department has incorporated into this final rule provisions allowing adoption of any one of three models. Those models allow RACs to be formed on the basis of State boundaries, BLM districts, or ecoregions. The boundary of the RACs will be determined by the State Director, in consultation with the Governor and other interested parties.

Size and composition of the councils are discussed at § 1784.2–1, Composition. Additionally, the Department notes that one of the purposes of the RACs is to fulfill the requirements of section 309(a) of FLPMA, which requires the Department to form councils of 10 to 15 members. Furthermore, FACA requires that councils advising the Federal government have a balanced membership made up of all groups having an interest in the issue on which the council provides advice. The provisions for membership included in the rule adopted today at this section will ensure implementation of those statutory requirements.

The Department agrees that input from the Governor is critical to the success of the councils. However, under the provisions of FACA, the Secretary must appoint the members of the councils. The Secretary will carefully consider nominees sent forward by the Governors. Furthermore, discussions between the State Director and the Governor will be important in determining whether councils will be set up on a State, District, or ecoregion basis. The Department will develop a course of study to ensure that council members are fully qualified to make recommendations to BLM concerning grazing management issues.

The RAC provisions as proposed differed in some ways from the Colorado model. While they were based to a considerable extent on that model, certain statutory requirements, including the provision in FACA that council members be appointed by the agency head, in this case the Secretary, dictated that some provisions of the Colorado model be revised. This final rule adopts three RAC models, one of which, Model A, is based largely on the Colorado model. Again, however, certain changes had to be made to accommodate legal requirements and the goals of this public rangelands management program.

Many of the terms for which commenters requested definitions have been discussed in the FEIS. Direct interest is discussed at § 1784.2–2, Avoidance of conflict of interest. ''Dispersed recreational activities'' is a term used by BLM to refer to recreation that takes place outside of developed recreational areas. Birding, hiking and hunting are dispersed recreational activities. Definition of the term is outside the scope of these grazing regulations.

The Department has corrected any confusion resulting from the proposed rule's use of the terms council, board, and committee. This is discussed at § 1784.2–1.

Many of the commenters' concerns and suggestions could not be reconciled within the framework of the specific proposal made on March 25, 1994. In order to be more responsive to those concerns, the Department has made a number of changes from the proposal in this final rule.

The section is retitled, to indicate that it now specifies those elements of advisory councils which will be required to implement provisions of FACA, FLPMA, or the goals of improving the rangeland management program. Optional features are provided at final § 1784.6–2. The word ''multiple'' is eliminated throughout the section.

Most significantly, the Department has dropped much of the detail regarding RAC requirements from this section of the final rule, and has substituted language that allows a more flexible structure. Coupled with the provisions adopted in final § 1784.6–2 this will allow a model for public participation to be selected for each State that best suits the State's own needs.

Many of the wording changes in the final rule are consistent with the goal of introducing flexibility. References to rangeland resource teams and technical review teams have been replaced with ''subgroups.'' Provisions in paragraph (a) that would have been specific to District based councils have been eliminated, since this final rule allows councils to be formed along State, District, or ecoregion boundaries.

Provisions in paragraph (c) regarding membership have been changed to eliminate specific numbers of members, since these can vary under the provisions of final § 1784.6–2. The language regarding the membership of a local official is adjusted to conform to FLPMA. A provision is added requiring that council members must reside within one of the States within the geographic jurisdiction of the council. This wording was selected to accommodate those cases where ecoregion-based councils may cover an area in more than one State. Provisions regarding membership of State employees have been consolidated for clarity. Other minor revisions have been made in this section for clarity.

Final paragraph (e) is modified from the proposal to specify that the letters of recommendation required of nominees to the councils do not have to be from a locally based group. Since the Department has decided to introduce a residency requirement, as discussed above, there is no need to require that letters of nomination also be local.

Provisions in proposed paragraph (h) regarding quorums and voting requirements have been revised consistent with the flexible models of public participation adopted today. Rather than numbers of members being specified, the final provision requires that council charters all contain rules defining a quorum and establishing procedures for sending recommendations forward to BLM, and that such recommendations require agreement of at least a majority of the members of the three groups defined in paragraph (c). This establishes a minimum requirement. Each council's charter could require higher levels of agreement.

Taken together, the Department believes the provisions adopted today fulfill the goal of broadening the base of public participation in rangeland management decisions, while ensuring that advice provided to the Department represents the views of a council which is balanced in its membership, knowledgeable about the land and issues, and committed to consensus decisionmaking.

Section 1784.6–2 Resource Advisory Councils—Optional Features

The proposed section would have provided for the formation of rangeland resource teams by an MRAC on its own motion or in response to a petition by local citizens. Rangeland resource teams would have been formed for the purpose of providing local level input and serving as fact-finding teams for issues pertaining to grazing administration issues within the area for which the rangeland resource team is formed. They would not have provided advice directly to the Federal land manager.

Rangeland resource teams would have consisted of five members selected by the MRAC, including two permittees or lessees, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Members representing grazing permittees or lessees and the local public-at-large would have been required to have resided within the area for which the team would have provided advice for at least two years prior to their selection. The proposed rule would have required that at least one member of the rangeland resource team be selected from the membership of the parent MRAC.

Rangeland resource team members would have had to be qualified by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations for membership would have required letters of recommendation from the local interests to be represented. The membership provisions were intended to ensure that rangeland resource teams were able to represent key stakeholders and interests in providing input to the more broadly organized MRACs.

The proposed rule would have required that all members of rangeland resource teams attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. The Colorado Working Group developed a proposal for a ''Range Ecosystem Awareness Program'' that would have established a basic curriculum including basic rangeland ecology, human resource development, the relationship of public land resources to private lands and communities, and the pertinent laws and regulations affecting rangeland management.

Rangeland resource teams would have had opportunities to raise any matter of concern with the MRAC and to request that the MRAC form a technical review team, as described below, to provide information and options to the council for their consideration.

Although no specific provision was made in the proposed rule, rangeland resource teams could have petitioned the Secretary for chartered advisory committee status. Chartered rangeland resource teams would have been subject to the general provisions of 43 CFR part 1780 and the provisions of the charter prepared pursuant to FACA.

Many of the commenters on this section opposed the formation of rangeland resource teams. Many reasons were given for this opposition.

Some asserted that both rangeland resource teams and the technical review teams would be subject to FACA, unless they could be sequestered from BLM. A commenter suggested requiring that the subgroups be fairly balanced. Others opposed any requirement for members to be local residents.

Some other commenters stated that the teams violate the requirement of Section 8 of PRIA to consult, coordinate, and cooperate. Many of the same commenters asserted that the Department cannot change the groups targeted by Section 8. Some commenters stated that the teams were not needed, would not be effective, would be costly, or would slow the planning and implementation process.

Some were concerned about how the teams would be formed. Some stated that they should be created by and report to BLM; others suggested that the

interested public should be able to request BLM to form a team; still others said they should be formed by the RACs. Others suggested that the regulations should be flexible enough to let these teams consider issues other than grazing.

A number of commenters spoke to the make-up of the rangeland resource teams. Many supported a local residency requirement for all members, others opposed the emphasis on local residency. Many stated that all members should have a high level of expertise in rangeland issues.

Many different specific suggestions about team make-up were received. Others were concerned that these teams be formed for a limited time, so that they would not be too expensive or perpetuate themselves. A number of specific comments were made on the content of courses to be offered to team members. Another asked how rangeland resource teams would bring on-going consensus efforts like the Trout Creek Work Group ''closer to the process.''

Many of the above concerns about rangeland resource teams have been addressed in the foregoing discussion of § 1784.6–1. As noted there, the Department has decided to make significant changes from the proposal in this final rule.

The Department has not adopted the suggestions on the makeup and structure of the teams, and has decided to retain the original proposal. However, as discussed below, the final rule will accommodate other models of public participation. If the rangeland resource team structure does not suit local conditions, a different model can be chosen. Similarly, groups such as the Trout Creek Work Group can be incorporated into the process through the use of another model which allows the inclusion of groups of different sizes.

Rangeland resource teams or other subgroups serving similar functions will now be optional features under the required RACs. The final rule does not provide for chartering of any subgroups under FACA, and such subgroups will not advise BLM directly, but will provide assistance to the chartered council to improve its ability to function effectively. All special purpose, short term groups will be formed exclusively by BLM and will be made up of Federal employees, whether regular staff or contract employees. Regarding residency requirements, the Department in the final rule at § 1784.6–1 has decided to require that all RAC members and members of general purpose local subgroups must be residents of one of the States in which the area covered by the specific council is located. The Department believes this structure both assures compliance with FACA and encourages local level participation in the decision-making process.

The development of the training course is discussed at § 1784.6–1.

This section, which in the proposal was exclusively about rangeland resource teams, now presents three alternate models for public participation, any of which can be chosen by a State Director, in consultation with a Governor and other interested persons. Each model provides specific details about four attributes of the councils: council jurisdiction, membership, quorum and voting requirements, and subgroups.

Model A is based on the work of the Colorado Working Group on rangeland improvement. It has the following characteristics:

(i) *Council jurisdiction.* The geographic jurisdiction of a council will coincide with BLM District or ecoregion boundaries. The Governor of the affected State(s) or existing RACs may petition the Secretary to establish a RAC for a specified BLM resource area.

(ii) *Membership.* Each council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least three council members from each of the three groups from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a RAC provides advice, down to the level of a single allotment. These local teams will provide local level input to the advisory council. These teams may be formed under the auspices of a RAC on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the RAC on issues pertaining to grazing administration within the area for which the rangeland resource team is formed. Rangeland resource teams will consist of five members selected by the RAC. Membership will include two persons holding Federal grazing permits or leases, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least one member must be selected from the membership of the RAC. Members of the rangeland resource teams must be residents of the State in which the area covered by the team's jurisdiction is located.

The RAC will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the RAC and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the RAC or a rangeland resource team to gather and analyze data and develop recommendations to aid the decisionmaking process. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

Model B is based on the work of the Wyoming Steering Committee on the Management of Federal Lands. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The council will promote Federal, State, and local cooperation in the management of natural resources on public lands, and coordinate the development of sound resource management plans and activities with other States. It will provide an opportunity for meaningful public participation in land management decisions at the State level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c) above, and will include at

least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor will chair the council.

(iii) *Quorum and voting requirements.* The charter of the council will specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM. Formal recommendations require agreement of at least three council members from each of the three groups.

(iv) *Subgroups.* Local rangeland resource teams can be formed under the auspices of the Statewide council, down to the level of a 4th order watershed. These local teams will provide local level input to the advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the RAC, an 80% affirmative vote will be required to send a recommendation to BLM.

Rangeland resource teams will not exceed 10 members and will include at least two persons from environmental or wildlife groups, two grazing permittees, one elected official, one game and fish district representative, two members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for two-year terms by the RAC and may be reappointed. No member may serve on more than one rangeland resource team.

In addition, technical review teams can be established on an as-needed basis by the BLM authorized officer in response to a request by a RAC or rangeland resource team, in response to a petition of local citizens, or on BLM's own motion. These teams will address specific unresolved technical issues. When the team is requested by the RAC or a rangeland resource team, its charge will be established jointly by BLM and the council; membership will be determined by BLM and will be limited to Federal employees and paid consultants. Technical review teams will be limited to tasks relating to fact-finding within the geographic area and scope of management actions for which the rangeland resource team or RAC provides advice. Technical review teams will terminate upon completion of the assigned task.

Model C was developed by BLM to accommodate other structures of public participation, consistent with the requirements of FACA, FLPMA, and the goals of this rangeland management program. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council will be 10 to 15 members, distributed in a balanced fashion among the three groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each group must be present to constitute a quorum and conduct official business, and that a majority of each group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* RACs may form local rangeland resource teams to obtain general local level input necessary to the successful functioning of the RAC. Such subgroups can be formed in response to a petition from local citizens or on the motion of the RAC. Membership in any subgroup formed for the purpose of providing general advice to the RAC on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c). Additionally, BLM may form technical review teams as needed to gather and analyze data and develop recommendations to aid the council. These teams may be formed at BLM's own option or in response to a request from the advisory council.

The Department believes that the above three models for public participation can be adapted to satisfy the concerns and needs of all areas which include public lands or other lands administered by BLM.

Section 1784.6–3 Technical Review Teams

Under the proposed rule an MRAC could have established technical review teams, as needed, in response to a petition of an involved rangeland resource team or on its own motion. Rangeland resource teams chartered under FACA could also have established technical review teams. Technical review teams would have conducted fact finding and provided input to the parent advisory council or chartered rangeland resource team. Their function would have been limited to specific assignments made by the parent council, and been limited to the geographical management scope of the MRAC or chartered rangeland resource team. Technical review teams would have terminated upon completion of the assigned task.

Members of technical review teams would have been selected by the MRAC or chartered rangeland resource team on the basis of their knowledge of resource management or their familiarity with the issues involved in the assigned task. At least one member of each technical review team would have been required to be selected from the membership of the parent advisory council or chartered rangeland resource team.

Some of the commenters on this section specifically opposed the concept of technical review teams, saying they would not streamline administrative functions, were not needed, would be obstacles to change, and would be expensive. Other commenters asserted that any such teams should be formed by BLM under the provisions of FACA. A number of commenters wrote to the make-up and operation of the teams, and asserted that members must be technical experts and should be local residents.

Most of the commenters' concerns about technical review teams have been addressed in the discussions of §§ 1784.6–1 and 6–2. In response to commenters' concerns, the Department has decided to require that any such technical team be formed exclusively by BLM. Because of the requirements of FACA, they will be made up exclusively of Federal employees, either regular staff or contract employees. Such technical teams could be formed under any of the three models presented in § 1784.6–2, either at the request of a chartered committee or on BLM's own motion. The Department believes this is the best way to ensure that the requirements of FACA are fulfilled, but that the RACs have available to them special expertise to address technical issues when needed.

Consistent with the above discussion, and the discussions of final §§ 1784.6–1 and 6–2, the Department is not adopting this provision in the final rule. Provisions allowing the formation of technical teams by BLM, as needed, are found in final § 1784.6–2.

Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

The proposed rule would have amended the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury, the enhancement of productivity for multiple use purposes, the maintenance of open spaces and integral ecosystems, and stabilization of the western livestock industry and dependent communities.

The Department received many comments on this section. Many commenters said that the proposed objectives statement was vague, subjective, not achievable, and unmeasurable. Others said that it was antagonistic, and assumed that ranching operations are destructive. Some asserted the statement ignored the valuable contribution made by livestock grazing as well as the improvements ranchers had made on the Federal lands. Some pointed out that proper grazing does not harm the resources.

Many commenters suggested additions to the list of objectives of the rules. Many of these commenters supported using the objectives identified by the Colorado Working Group. It was suggested that the objectives should have a greater emphasis on ecosystem management, and should include standards and guidelines pertinent to the economic and social factors which affect the human environment.

Many commenters objected to the terms ''destruction and unnecessary injury.'' This objective had been included to highlight the Department's responsibility under Section 315a of TGA which requires the Department to ''preserve the land and its resources from destruction or unnecessary injury.'' Others asserted that the view that ecosystems are static and can be ''preserved'' was out of date. Many commenters spoke to the objective of maintaining the public values associated with open spaces and integral ecosystems, asserting that this was not an appropriate objective for grazing regulations.

A number of commenters spoke on the objective concerning stabilization of the livestock industry and dependent communities. A typical comment asserted that small ranches are often dependent on second jobs in town, and that actually the ranches are dependent on the communities, not vice versa. Some suggested deleting ''dependent communities.'' Some commenters took strong exception to this particular objective. They asserted that the Department was, with this objective, singling out the livestock industry for favored treatment.

Regarding the objective on enhancing productivity for multiple use purposes, commenters offered suggestions that enhancement for multiple uses should not be allowed to conflict with grazing and that enhancing for multiple use purposes must be subject to maintaining a healthy ecosystem.

Many commenters were concerned with the references to ''ecosystems'' and asked for a definition of the term. Some asked for a definition of ''integral ecosystem'' while others were concerned that the term would be used to regulate private lands.

This final section is substantially revised from the objectives presented in the proposed rule. The provision as adopted today includes the following objectives: to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote orderly use, improvement and development of the public rangelands, to establish efficient and effective administration of grazing of public rangelands; and to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

The new statements are based largely on commenters' concerns. While all those concerns could not be accommodated, the Department believes that the final rule represents the best summary of the objectives of this rangeland management program.

The first objective, to promote healthy sustainable rangelands, is the key component of the Department's program. The statement is based on the work of the Colorado Working Group and responds to the Department's and some commenters' concerns that the objectives should clearly state the objective of achieving healthy, functional rangelands. It reflects the Department's intent to make decisions regarding grazing on the public lands that will promote healthy conditions across all the grazing lands. This embodies the concept that such decisions must be made on a coordinated basis and must consider other resource values that contribute to the health of the land.

The second objective, to accelerate restoration and improvement of public rangelands to properly functioning conditions, embodies the concept that BLM, in order to fulfill its statutory responsibilities to the public rangelands, must renew its efforts to restore those areas that are not functioning properly. It emphasizes that attainment of healthy conditions is a process that requires constant effort; West-wide healthy conditions cannot be attained overnight.

The third objective, to promote orderly use, improvement and development of the public rangelands, is unchanged from the proposal. It is drawn directly from TGA (43 U.S.C. 315(a)). It emphasizes that the rangelands are to be used and developed, but also that such use and development must be done in an orderly way, and that an integral part of the process should be improvement of the rangelands.

The fourth objective, to establish efficient and effective administration of grazing of public rangelands, is based on the work of the Colorado Working Group. The statement emphasizes that BLM's administration of its program must be both efficient and effective. The rules adopted by today's action are an important part of the Department's efforts to ensure that objective can be achieved.

The final objective, to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands, is a modified version of an objective included in the proposal. It asserts that BLM has a responsibility to recognize the effects its actions may have on the western livestock industry. However, the Department has reworded this objective from the proposal because it agrees with commenters' concerns that BLM's program, in and of itself, cannot ''stabilize the western livestock industry.''

Largely as a result of public comment, the Department has decided not to adopt the proposed objectives concerning preservation of rangeland resources from destruction and unnecessary injury; maintenance of the public values provided by open spaces and integral ecosystems; and enhancement of the productivity of public lands for multiple use purposes by prevention overgrazing and soil deterioration. These themes of the proposed amendments are sufficiently covered in the more general objectives adopted in this final rule. The objective of the previous regulations pertaining to providing for the inventory and categorization, trends and monitoring of public lands on the basis of range conditions, is omitted as an unnecessary

statement of BLM's internal working procedures.

In accordance with the above discussion, the Department has adopted the objectives statement as amended.

Section 4100.0–5 Definitions

The proposal would have removed definitions of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing.'' It would have amended definitions of ''Active use,'' ''Actual use,'' ''AMP,'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and would have added in alphabetical order definitions of ''Activity plan,'' ''Affiliate,'' ''Conservation use,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing.'' This final rule adds definitions ''Annual rangelands,'' and ''Ephemeral rangelands.''

The final rule makes changes to the proposed definitions of ''affiliate'' and ''consultation, cooperation and coordination.'' It makes minor technical and clarifying changes to the proposed definitions of ''conservation use,'' ''grazing lease,'' ''grazing permit,'' ''land use plan,'' ''range improvement,'' ''unauthorized leasing and subleasing,'' and ''utilization.'' It adds definitions of ''annual rangelands'' and ''ephemeral rangeland.'' Otherwise, the definitions are adopted as proposed.

The following specific actions are taken by this final rule.

Active use is redefined to include conservation use and exclude temporary nonuse or suspended use.

A definition of *Activity plan* is added to mean a plan for managing a use, or resource value or use. An AMP is one form of an activity plan.

Actual use is redefined to clarify that the term may refer to all or just a portion (e.g., a pasture) of a grazing allotment.

A new definition of *Affiliate* is added for use in determining whether applicants have satisfactory records of performance for receiving permits or leases or in receiving additional forage that becomes available for allocation to livestock grazing.

Allotment Management Plan is redefined to describe more clearly the focus and purpose of the plan, and to make clear that an AMP is a form of activity plan.

A definition of *Annual rangelands* is added to mean those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years.

A definition of *Conservation use* is added to mean an activity on all or a portion of an allotment for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term includes improving rangeland conditions and the enhancement of resource values or functions.

Consultation, cooperation and coordination is redefined to mean a process for communication between representatives of BLM and the parties involved for the purpose of sharing information, obtaining advice, and exchanging opinions.

A definition of *Ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, these rangelands receive less than eight inches of rainfall each year and lie below 3,200 feet elevation.

Grazing lease and *Grazing permit* are redefined to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference is redefined to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee, lessee, or applicant. The definition omits reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the Forest Service, BLM will identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

A definition of *Interested public* is added to mean an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments.

Land use plan is redefined to remove the implication that all management framework plans will be replaced by resource management plans.

A definition of *Permitted use* is added to define the amount of forage in an allotment that is allocated for livestock grazing and authorized for use, or included as suspended nonuse, under a grazing permit or lease. The term replaces the AUMs of forage use previously associated with grazing preference.

Range improvement is redefined to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

Suspension is redefined to reflect the revision of the definition of the term ''preference.'' Within this definition the term ''preference'' is replaced with ''permitted use.''

A definition of *Temporary nonuse* is added to refer to permitted use that may be temporarily made unavailable for livestock use in response to a request by the permittee or lessee.

A definition of *Unauthorized leasing and subleasing* is added to mean the lease or sublease of a Federal grazing permit, associated with the lease or sublease of base property, to another party, without approval of the authorized officer, the assignment of public land grazing privileges to another party without the assignment of the associated base property, or allowing another party to graze livestock that are not owned or controlled by the permittee or lessee on the permittee's or lessee's public land grazing allotment. This changes the existing definition which could be read to imply that no forms of third party lease arrangements could be authorized.

Utilization is redefined to mean the consumption of forage by all animals consistent with the definitions in BLM Technical Reference 4400–3 and the Bureau Manual System for Inventory and Monitoring.

The Department received many comments on this section. Some commenters wanted original definitions left unchanged; others suggested further revisions, still others asked that additional new definitions be added.

Many comments were received on the definitions of *active use, actual use, conservation use, grazing preference or preference, permitted use, suspension,* and *temporary nonuse.* A number of commenters expressed uncertainty regarding the concept of conservation use, some objecting to the inclusion of conservation use as an active use. Others indicated that the concept of conservation use may be inconsistent with the policy objectives articulated in various statutes.

Other concerns with the concept were that it implied that grazing is harmful to the range, and that permittees applying for conservation use should pay the grazing fee and be required to maintain improvements. These and other comments on conservation use are more appropriately addressed in the discussion of § 4130.2.

The Department intends that *conservation use* be an active use rather than merely a non-use. Conservation use is intended to protect the land and its resources from destruction, improve rangeland conditions, or enhance resource values. All of these goals are

fully consistent with the requirements of governing statutes. In fact, conservation use includes a variety of activities to improve rangeland conditions. Because the land and the forage involved are actively being devoted to accomplishing specific conservation-oriented objectives, they are deemed actively used. The concept of conservation use, and its application to this program, are discussed more fully at § 4130.2.

In general, commenters expressed some confusion regarding application of the concepts of suspension and temporary non-use under the proposed definitions of these terms. In particular, some commenters were concerned that the definitions might be used by BLM to restrict active use.

Temporary nonuse and *suspension* remain options under the rule finalized today. Temporary nonuse is for the convenience of a permittee's or lessee's livestock operation and must be included as a part of his or her application each year. Therefore, BLM does not believe temporary nonuse should be considered active use. The BLM will authorize changes in temporary nonuse from year to year, but temporary nonuse may only be approved by the authorized officer for up to three consecutive years. With regard to changes in use initiated by the permittee or lessee, the concept of temporary nonuse is expected to continue as the common practice used to respond to fluctuations in the weather, the livestock market or other factors beyond the control of the operator.

Suspension of grazing use is initiated by the authorized officer, and may be agreed to by the permittee or be the result of a decision by the authorized officer. It results, for example, from situations requiring a reduction of use of the rangeland to protect the resource or where there has been noncompliance. *See* also the discussions of subparts 4110 and 4130.

Regarding *active use,* BLM intends to continue allowing changes in active use from year to year, depending on conditions. The authorized officer can adjust active use and other factors under a permit or lease *as long as the changes are within the terms and conditions of the permit or lease.* If the authorized officer determines that changes in use must be made outside the terms and conditions, it will be done in consultation with the permittee or lessee, the State and other interested parties.

Numerous comments were received on proposed changes to the definition of ''grazing preference,'' including the addition of the term ''preference.'' Many commenters interpreted the proposed changes to mean that preference was being abolished. Others were concerned that unless preference refers to a specified quantity of forage, ranching operations would be negatively impacted. They stated that preference, tied to a specific amount of AUMs, adds value and stability to ranching operations, for example, by enhancing the operator's ability to borrow money. They also maintained that a preference is a property right and that the proposed rule could result in a ''taking.'' And some commenters expressed the view that the proposed definition excluded owners of water or water rights and that such owners deserve priority consideration.

The Department has changed ''grazing preference'' to *preference or grazing preference* because the terms are used interchangeably and to clarify that the term refers only to a person's priority to receive a permit or lease, and not to a specific number of AUMs. The term ''preference'' was used during the process of adjudication of available forage following the passage of TGA to establish an applicant's relative standing for the award of a grazing privilege. At one time in the evolution of grazing administration preference was the amount of use expressed in AUMs that any particular permittee may have made during the ''priority period''—the four years following passage of TGA. Preference is still defined as the relative standing of an applicant as reflected in historic records. Through time, common usage of the term evolved to mean the number of AUMs attached to particular base properties. But this usage dilutes the original statutory intent of the term as an indication of relative standing. The term ''permitted use'' captures the concept of total AUMs attached to particular base properties, and use of this term does not cancel preference. The change is merely a clarification of terminology. Issues of valuation of permits are discussed in more detail in the FEIS, and takings are discussed under ''Takings'' in the General Comments section of this preamble.

With regard to owners of water or water rights, the evolution of the term preference was similar. The status of waters and water rights that have been recognized as base property would not be affected by the rules adopted today. Waters recognized as base property would continue to qualify as such. The preference for receiving a grazing permit or lease that is attached to base property would not be affected. The Department believes that permitted use is the more appropriate term to describe and quantify the number of AUMs of forage being allocated.

The comments on the proposed definition of *permitted use* were similar to those relating to preference. Some commenters asked what would happen to existing suspended AUMs under the new concept of permitted use. Some suggested that the proposed rule would limit grazing to what is stated in the land use plan, and that this would effectively cancel the grazing preference. These commenters suggested that the result would be significant reductions in grazing, and that the regulation would thus ''take'' the rights of the permittee.

As they did with respect to preference, some commenters stated that the definition of permitted use would result in reduced economic stability and would eliminate the collateral value of grazing permits. They expressed concern that the new definition would negatively affect property values and would adversely affect the ability of the permittee to obtain financing.

Commenters further opposed the use of the Land Use Plan to determine the permitted grazing use. They argued that these plans are not site specific documents, and that it is arbitrary for the Department to use them to make site specific decisions. They advocated that BLM use actual range condition and trend data on individual allotments to make these decisions. Some commenters took the position that the proposed definition of permitted use was contrary to statute.

Permitted use is an end product of the process of renewal or issuance of permits or leases. The land use plan provides guidance for allocation of land or forage to various uses on a regional scale. In the context of grazing, the land use plan sets the basic parameters by which permits and leases are issued or renewed. The objectives set in the plan are refined in the permit or lease, and permitted use is then expressed in AUMs of active use, including both livestock use and conservation use, as well as suspended use and temporary nonuse during a particular time period. This process and terminology are fully consistent with TGA, FLPMA and PRIA. The land use plan allows adjustment of the AUM amounts and seasons based on monitoring, other studies, or where changes in permitted use or terms and conditions are necessary to meet land use plan objectives. Where changes in the situation are major, it may be necessary to amend the land use plan, thus re-initiating the process. In the absence of a major change in the overall

situation and where these objectives are being met, changes in permitted use through BLM initiative are unlikely. This provides a high level of security, stability and predictability from year to year.

Few comments were received on the proposed definitions of *actual use or utilization*. One comment stated that the proposed definition had changed the concept from a record of livestock use to a plan for actual use, and that the permittee should be able to make good faith changes to protect rangeland by changing grazing schedules to respond to weather forces. Others suggested that the Department was exceeding its authority in applying actual use to the ''number, kind or class of livestock.'' Still others suggested that actual use must include all animals which consume forage, not just domestic animals. Many commenters on the proposed definition of *utilization* recommended that BLM link utilization to actual use and include use of forage by horses, burros and wildlife.

The Department has the authority to apply the concept of *actual use* to ''number, kind or class of livestock.'' Under section 315 of TGA, the Secretary has the authority to specify ''numbers of stock and seasons of use.'' Additionally, under FLPMA, the Secretary has the authority to establish terms and conditions for grazing leases and permits. The reporting of actual use is necessary to evaluate the effect of grazing practices, and is a fundamental tenet of the science of range management. AUMs are a unit of measure of forage consumption and allocation. Knowing the number of animals involved and the duration of grazing in a specific situation is essential to quantifying the AUMs consumed and in setting future numbers and seasons. Actual use and *utilization* or use patterns, when considered either with the current year's weather or over time, provides a very complete picture of the impact of grazing use on rangeland resources. The same information also provides significant insight into opportunities to alter management, to improve livestock distribution, plan range improvements or to accurately predict the future consequences of continuing the current grazing practices.

Actual use, in the context of this final rule, refers strictly to domestic livestock grazing. However, the Department concurs that when it is used to evaluate the effect of a particular grazing practice, BLM must consider the use made by all grazing animals including wildlife and wild horses and burros where they are present. Actual use data can be used both for billing purposes and to analyze the impact of grazing. Where its intended use is strictly for billing, the data may be aggregated for the entire allotment area and entire billing period. Where the data are to be used for analytical purposes, it must be broken out by the treatment area (frequently a pasture).

Some commenters submitted comments on the definition of *activity plan. Most questioned the relationship between the concept and the AMP specified in FLPMA. Some asserted that since FLPMA uses the term AMP, there is no authority for an activity plan, or that activity plans could not relate to grazing and therefore have no place in grazing regulations. Others suggested narrowing the concept by applying it specifically to grazing areas and for the purpose of achieving grazing objectives in order to maintain desirable range conditions.*

Activity plans have been included in the definitions and the text of this final rule because there are efficiencies to be gained by considering a variety of uses simultaneously in one planning document. The Department disagrees that just because FLPMA uses the term AMP, the Department has no authority for an activity plan. The Secretary has ample authorities under FLPMA, TGA, and PRIA to undertake any planning activities necessary to implement the grazing program.

Many comments were received on the concept of *affiliate.* Many commenters stated that the proposal was vague, discriminatory against ranch operators and that it will lead to capricious and arbitrary enforcement by BLM. Other commenters stated that ''control'' was poorly defined and that the concept should be applied to other parties such as the RAC members.

Some commenters expressed concern about the liability provisions. They stated that because of potential liability resulting from this provision, banks and other businesses will be less likely to do business with ranchers who have grazing permits or leases. Moreover, some asserted that ranchers will be less responsible if they know that they are not solely liable for their actions. Other commenters asked if permittees must have control of affiliates and if affiliates' records of performance would be considered when issuing a permit.

The purpose behind the use of the term *affiliate* is to promote accountability among all parties involved in the control of a grazing operation. The term is commonly used in business to identify persons having legal ties to each other where accountability is in some manner shared. Some permits or leases are issued in the name of one person when in actuality there may be other persons closely involved in the management of the operation. In the final rule, the Department has not adopted proposed provisions referencing percentage of ownership and specific relationships such as officers and directors. The term ''entity'' includes partnerships, corporations, associations, and other such organizations. The Department believes that the definition adopted better addresses the affiliate relationships typically associated with livestock grazing operations.

The Department does not intend the term ''affiliate'' to be applied in an over broad or burdensome manner but rather in a manner that recognizes ordinary business relationships. Normally, affiliates will be partners, agents and their principals, family members, and trusts or corporations involving such individuals. It is unlikely that ''affiliate'' would include financial institutions.

Numerous comments were received on the definition of *Allotment Management Plan* and *consultation, cooperation and coordination.* The commenters stated that the proposed definition of the latter term is contrary to FLPMA, particularly because they believed it eliminates consultation, cooperation and coordination with the lessee or permittee. Other commenters stated that the definition did not meet standards for local involvement under Section 8 of PRIA, and did away with a special and contractual relationship between permittees and BLM.

The Department intended the change proposed in this definition to simplify references to consultative activities and to make usage consistent throughout the regulations. Throughout these rules, the Department has specifically increased—not decreased—opportunities for interaction with the permittee, lessee, States, and the interested public. However, because of the confusion generated by the language in the proposal, the Department has decided to use the term ''consultation, cooperation, and coordination'' as it is used in existing rules.

A number of comments were received on the definition of *interested public.* Comments addressed the effects of broadening the public role in land use decisions, including the need for BLM to make timely decisions. Some comments offered more restrictive definitions of ''interested public.'' Other comments supported the change in definition and requested that the Department clarify in the rule that members of the public are not any less

affected by livestock decisions than are permittees.

The Department does not agree that the regulations include excessive public involvement by expanding opportunities for input into grazing management to the *interested public.* Anyone with a high level of interest in shaping objectives, planning courses of action, and evaluating results associated with management of the public lands should have an opportunity for involvement. Congress has acknowledged this interest and makes provisions for it in FLPMA, NEPA, FACA and the Administrative Procedure Act (APA). Experience has shown that the greater and more meaningful the participation during the formulation of decisions and strategies for management, the higher the level of acceptance and thus the lower the likelihood of a protest, an appeal or some other form of contest. Nevertheless, it will remain the responsibility of BLM to make timely decisions. These rules do not change existing time frames for public comment or for protests or appeals.

Some comments were received on the definition of *grazing permit* or *grazing lease.* Commenters asserted that the definition failed to make adequate distinction between Section 3 and Section 15 allotments. The distinction between Section 3 and Section 15 lands is made at § 4110.2–1(a).

The Department received a few comments on the definition of *land use plan.* Some commenters wanted the definition to require BLM planning documents to conform to State or local land use plans. Other commenters wanted BLM land use plans to give guidance to the designation of lands for grazing. *Land use plans* provide guidance on a regional scale and allocate resource uses and objectives. FLPMA and the subsequent planning regulations provide sufficient authority to prevent grazing in areas where grazing would conflict with other objectives. Local and State governments will be considered members of the interested public and invited to participate in the development of land use plans. It is not necessary for Federal plans to conform to local or State plans in all cases. FLPMA requires the Department's planning process to be as consistent as possible with local or State plans, but not to be in conformance with them.

A few comments were received on the definition of *range improvement.* Some commenters supported the use of the range improvement fund to benefit livestock; others sought to expand use of the fund to support projects intended to improve rangeland. FLPMA directs that ''* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *'' All uses authorized by FLPMA, including improvements to the health of the rangeland, will remain valid under this rule.

The Department received a few comments on the definition of *unauthorized leasing and subleasing.* Commenters stated that the proposed subleasing definition limited subleasing, which is necessary to rural economic health. The Department believes the final provisions relating to *unauthorized leasing and subleasing* do not discourage subleasing that may be necessary to sustain rural economic health. Indeed, the current definition of subleasing implies that no subleasing is allowed. This new definition, by addition of the word ''unauthorized,'' clarifies that the Department *will* approve subleasing under certain conditions. The Department believes that it is simply good land management for it to know to whom permittees or lessees have subleased their grazing privileges, and under what circumstances.

In response to concerns raised by the commenters, the Department has decided to delete provisions requiring the payment of a surcharge on subleasing grazing privileges in conjunction with the lease or sublease of base property. This is discussed in detail in the section of this preamble relating to final § 4130.8 (§ 4130.7–1 in the proposed rule).

The Department also received requests that it define *de minimus,* biological diversity, ecosystem, environmentalists, ecosystem management, ecosystem management framework and viable population. Some commenters suggested that a definition of grazing association be added. A number of commenters requested a definition of ''substantial compliance.'' The Department believes that these terms are adequately defined by common usage.

In accordance with the above discussion, the Department has decided to adopt the proposed definitions, with some changes.

The definition of *affiliate* is revised to eliminate references to percentage of ownership and specific relationships such as being an officer, director, or controlling fiscal or real property resources. The Department believes the definition adopted adequately encompasses such relationships. The language is also amended by adding reference to ''applicant'' as well as ''permittee or lessee.'' Finally, ''is controlled by, or is under common control with,'' is added after ''controls,'' to clarify what types of relationships are covered by the provision.

A new definition of *annual rangelands* is added in response to commenters' requests. The term means those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years. This is a technical term associated with the rangeland management program, and the Department agrees that a definition will provide clarity to the application of these provisions.

The definition of *conservation use* is revised to clarify that it can apply to all or a portion of an allotment.

The definition of *consultation, cooperation, and coordination* is revised to mean a process for communication between BLM and parties involved in particular rangeland management decisions.

A definition of *ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, such areas receive less than 8 inches of rainfall each year and lie below 3,200 feet elevation. This is a technical term associated with the rangeland management program and the Department believes that a definition will provide clarity to the application of these provisions.

The definitions of *grazing lease* and *grazing permit* are revised by the addition of the phrase ''the area authorized for grazing use, or both,'' to accommodate situations such as ephemeral or annual rangeland in which the area authorized for grazing is used in place of AUMs to specify permitted use, because of inconsistent production of forage. The definition of *land use plan* is revised to clarify that the term refers to plans developed under 43 CFR Part 1600.

The definition of *range improvement* is revised to remove the phrase ''or provide habitat for'' to ''to benefit'' livestock. This change was made to avoid confusion with the concept of wildlife habitat.

The definition of *utilization* is revised to clarify that it refers to a ''portion'' of forage consumed, which reflects actual practices. The proposal used the term ''percentage.''

Section 4100.0–7 Cross-References

This section would have been amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and to 43 CFR part 1780 regarding advisory committees.

No comments were received on this section and it is adopted as proposed.

Section 4100.0–9 Information Collection

The proposed rule would have added this section to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section would have disclosed to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and how the information will be used by BLM. Several comments were received on this section addressing information resources and questions of timeliness relating to compliance.

The intent of this section is to comply with a statutory requirement to disclose how much time will be required for regulated persons to comply with the information collection requirements of these regulations. Which sources of information the Department will use to obtain local input is not a germane issue, nor is the time required by commenters to comment on these regulations.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4110.1 Mandatory Qualifications

In the proposed rule, this section would have provided that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. The section would have discussed what satisfactory record of performance means for both renewals and new permits. For renewals, the proposal would have provided that it means being in substantial compliance with the rules and regulations issued and the terms and conditions of the existing permit or lease for which renewal is sought. In assessing whether an applicant for renewal is in substantial compliance, the authorized officer would consider the number of prior incidents of noncompliance with the requirements of 43 CFR Part 4100. The authorized officer can include in this consideration the nature and seriousness of any noncompliances. For new permits, it would have meant not having had any State grazing permit or lease within the Federal grazing allotment, or any Federal grazing permit or lease, cancelled within the previous 36 months, and not being barred from holding a Federal grazing permit or lease by court order.

The proposal further discussed the determination of affiliation. It would have provided that in determining affiliation, the authorized officer would have considered all appropriate factors including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships. This provision would have ensured that all parties who had the ability to control operations on a permit or lease, not just the immediate permittee or lessee, had a record of good stewardship of the land.

Additionally, the proposal would have clarified that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, could meet the criteria for qualifications for a grazing permit or lease.

Finally, the proposal would have required applicants to submit applications and any other information requested by the authorized officer to determine that all qualifications have been met. This provision would have clarified that applicants cannot refuse to provide BLM with information needed to evaluate applications for permits or leases.

The Department received a substantial number of comments on this section. Major themes expressed in the comments pertained to the Department's rationale and legal authority for the provisions, opposition to finding applicants to be qualified in cases where the applicant was not actively involved in the livestock business, concerns about how various terms would be defined and applied in determining qualification, the perceived potential of the provision to adversely affect permit tenure, property values, and financing, and BLM's ability to implement the provisions as worded.

Many comments opposed allowing persons not engaged in the livestock business to qualify for grazing permits and leases. Some commenters asserted that this provision, in combination with provisions for conservation use, would result in non-grazing interests acquiring and retiring grazing permits, would cause deterioration of the land, and would be inconsistent with TGA. Similar comments were also received on § 4100.0–5 Definitions and § 4130.2 Permits or leases.

There was also considerable concern about the requirement that permit applicants have a satisfactory record of compliance. In particular, commenters asked how terms such as ''permit violations'' and ''satisfactory record of performance'' would be defined, who would make the determination of satisfactory performance, and whether the provisions would be applied consistently across BLM administrative boundaries. One comment suggested that BLM and permittees or lessees should agree to how terms will be defined and applied prior to the issuance of a new permit, to enable both parties to understand their status. Others asserted there was no statutory basis for this provision. Some had a concern that evaluating compliance was unduly burdensome on the agency.

One comment stated that the basic principle of having a satisfactory record was reasonable because it was ''little different than a private landowner refusing to lease to a troublesome individual.'' The same commenter was concerned, however, that the provision gave authorized officers broad investigative powers that could result in an invasion of privacy. Commenters also expressed the opinion that only serious violations of permits or leases should be considered in applying the qualification provisions to prevent arbitrary adverse action.

Some commenters questioned the validity of considering the historical record of compliance, asserting that current performance is what is relevant. Still others stated that the provision did not go far enough in conditioning qualification on past performance. For instance, one commenter stated that any revoked State or Federal lease or permit should be the basis for denying new or renewed permits, asserting this indicated the permittee is unable or unwilling to be a responsible steward of public lands. Some commenters stated that 36 months was too short a time, and advocated a five or six year review period. Additionally, it was suggested that willful, repeat violators, reflected by multiple revocations of Federal or state permits, should be permanently barred from grazing Federal lands. It was also suggested that the burden of proof should be on the permittee or lessee.

Some commenters expressed opposition to considering performance connected with State leases in determining qualifications, questioning the Department's authority and the constitutionality of the provision. One comment said that it would discourage

permittees from leasing State lands, and in turn would hurt State income.

Several comments specific to qualifications for renewals stated that the concept of denial for noncompliance would decrease a permittee's security of tenure, in turn leading to less investment in permits and a decreased ability to achieve rangeland objectives. Some commenters were concerned that nonrenewal of a permit would decrease the value of the permittee's or lessee's private property and improvements, affected their ability to secure financing, and not renewing the lease constituted a ''taking,'' and the provision was contrary to TGA. Some asserted that disqualification on the basis of cancellations of other permits and leases should extend to renewals, not just new permits. Others suggested that applicants be disqualified when other permits or leases are suspended (in addition to cancelled permits and leases) or when not in compliance with other permits and leases at the time of application.

There was also some concern about the ability of BLM personnel to determine affiliation. One commenter asked whether he would be responsible for the actions of someone he sold his ranch to. An Indian tribe that holds permits and subsequently leases the permits to individual tribal members expressed concern that the tribe would be judged by the behavior of the individual permittees under the concept of affiliation.

The statutory basis for these regulations is found in FLPMA and TGA. FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate rules and regulations necessary to implement the requirements of the Act. Regarding requirements for first priority for renewal, 43 U.S.C. 1752 requires among other things that applicants must be found to be in compliance with the terms and conditions of the permit and pertinent rules and regulations. The amendments pertaining to the disqualification of applicants are intended to reflect the requirements of TGA and FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources. The Department believes that the provisions of this section of the rule are critical to BLM's ability to ensure that permittees and lessees are good stewards of the land. The provisions will benefit good stewards by ensuring tenure in the renewal of permits and leases and by giving them an advantage in the issuance of new permits and leases. Comments on ''takings'' are discussed in the General Comments discussion above.

Neither conservation use nor elimination of the requirement that applicants must be engaged in the livestock business is inconsistent with TGA. The TGA gives preference to landowners engaged in the livestock business but does not require it. This change is made necessary by the increasing number of part time ranchers, permits held by financial institutions and other non-ranching organizations, and permits where the livestock operator is in an initial developmental stage and is not yet ready to run cattle on the range.

The concepts of ''permit violations,'' ''satisfactory record of performance'' and ''substantial compliance'' are defined in general terms by the text of this final rule. Application on a case-by-case basis will be done by the authorized officer, within the framework established by this final rule, based upon review of the record. For renewals, it will extend only to review of the permittee's record on the permit or lease for which renewal is sought. On new permits, it will include a review of State and Federal leases within the prior 36 months, and of any existing judicial bar on holding a permit. References to permits cancelled for violations are used to distinguish such cancellations from administrative cancellations such as those that might occur when the land is to be devoted to another public purpose. Basing qualifications on whether past permits and leases have been cancelled for violation is intended to focus attention on those types of violations that justified decisive and substantial corrective action. As with all decisions under 43 CFR part 4100, denial of permit and lease applications under these provisions is subject to appeal under subpart 4160.

Consistency in application of the qualification requirements is of concern to the Department. These regulations will assist in achieving standardization, as will periodic information bulletins, instruction memoranda, technical guides, handbooks and training. The comment suggesting that permittees and BLM seek a mutual understanding of these provisions at the time of permit issuance is the type of guidance that may be provided. An appeal process is available under subpart 4160 when the permittee or lessee believes the regulations have been inappropriately interpreted in a specific circumstance.

Determining compliance with the terms and conditions and rules and regulations at the time of permit renewal stems from a statutory provision (43 U.S.C. 1752(c)). The Department expects that a finding of noncompliance will be an exception rather than a common occurrence. It is not feasible to require the authorized officer to investigate applicants to identify unrecorded instances of noncompliance, as suggested by several commenters. The resources required to conduct such a check would not be worth the results.

The Department disagrees that looking back at an applicant's history of performance on Federal or State grazing leases will violate privacy protections. The information used to evaluate historical performance will be established records that are available to the public. As stated above, the Department will use records of performance to confirm the ability of the applicant to be a steward of the public land. Although current performance may indicate stewardship, it does not provide as complete information as does the applicant's longer-term record of performance. However, consideration of the record is not without limitation. The Department chose the 36-month cut off of consideration of applicant and affiliate performance as a fair yet sufficiently rigorous measure of potential stewardship. The 36-month look-back applies only to applications for new permits or leases.

In regards to the comment that willful and repeated violations should result in a permanent debarment, the Department has chosen to reject the recommendation as excessively harsh. Due to the severity of such a penalty it is best left to the judicial system.

In essence, where there is a record of prior noncompliance, the burden of proof is on the permittee. The record of compliance will be determined based upon a review of the public record. If there are any extenuating circumstances to be considered, it will be the responsibility of the permittee to support them.

An applicant's record on State permits is relevant to consideration of the applicant's compliance record for purposes of obtaining new permits. If an applicant has violated the terms and conditions of a State lease to such an extent that the lease was cancelled, it is reasonable to assume that person is more likely to violate the terms or conditions of a Federal lease than is a person with a good record of compliance on State leases or permits. This is particularly true since consideration of State leases is limited to the allotment for which a new Federal permit or lease is sought. The Department disagrees that these provisions will discourage leasing of State lands. Only those few persons who

commit violations that result in the cancellation of their State permits will be affected.

The requirement of applicants for renewal to be found to be in compliance with terms and conditions and the pertinent rules and regulations on the permit or lease for which renewal is sought is not new; it stems directly from FLPMA (43 U.S.C. 1752(c)). While disqualification from obtaining a new permit or lease or a renewal of a permit or lease under this provision may in some instances affect financing or other aspects of ranch economics, the principal objective of these provisions—encouraging and recognizing stewardship—is consistent with the long-term stability and economic viability of a ranch operation.

The Department does not agree that suspensions, in addition to cancellations, should serve as a basis for disqualifications. Suspensions may be imposed for a wide range of problems. While some may be serious enough to warrant denial of additional permits, others may not be. If a person continues to perform so poorly that BLM suspends one or more permits, the authorized officer has the discretion to take the next step, cancellation. In that case, the person would become ineligible for a new permit for the next 36 months.

In regards to difficulties in determining affiliation, the Department does not intend that such a determination will require an in-depth investigation. Rather, the authorized officer will rely on readily available information and material provided by the permittee or lessee through the normal permit or lease application process.

Once an individual has sold his ranch and a permit has been transferred, the original owner will not be considered responsible for it. The concept of affiliate is intended to take into account those persons who actually have the ability to control the manner by which a grazing operation is conducted. The Department does not believe this extends to buyer-seller relationships unless as a result of the transaction the seller retains some interest in the operation, such that it meets the definition of ''affiliate.''

The concern of the tribal government is well founded. If the tribe receives permits and in turn leases them to individual tribal members, the Department assumes that the tribe's relationship to the tribal members meets the definition of control. Through the terms of the leases, if by no other means, the tribe can exercise control over its members.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the text subdivided and redesignated and headings added for clarity. Additionally, the word ''relevant'' is added to paragraph (d) to modify ''information'' to clarify that the authorized officer is authorized to request information from the applicant that is relevant to the application process, not just any type of information.

Section 4110.1–1 Acquired Lands

The proposed rule would have revised this section to clarify that BLM will apply the terms and conditions of existing grazing permits on leases on newly acquired lands in effect at the time of acquisition of the lands. This change was proposed to make clear that terms and conditions of permits and leases in effect at the time land is acquired will be honored subject to the provisions of the transfer of ownership (statute, title, etc.). Mandatory qualifications will not apply to such permits or leases until the expiration of their current term.

The Department received very few comments on this section. Some expressed concern that this provision would mean that lands grazed at the time of acquisition might later be turned to conservation use.

It is true that, under this provision, lands which were grazed at the time of acquisition could, with the expiration of the permit, be turned to conservation use. However, the commenters should keep in mind that conservation use will be issued only at the request of the permittee, and will be required to be consistent with applicable land use plans. Additional information on conservation use can be found in this preamble in the discussion of § 4130.2.

The Department has decided to adopt this provision as proposed.

Section 4110.2–1 Base Property

Under the proposed rule, this section would have been amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property.

A provision would have been added to clarify that the permittee's or lessee's interest in a base water previously recognized as base property would still qualify as base property following authorized reconstruction or replacement required to continue to service the same area.

The Department received comments on this section ranging from those who questioned the justification for implementing the concept that base property be capable of supporting livestock use to those who questioned how the Department would determine what was capable of supporting livestock and what was not. Others questioned whether base property must be contiguous.

The Department has introduced the concept of ''capability'' of base property to support livestock in order to a) recognize that not all private land holdings are of sufficient size and character to support a livestock operation, and b) provide for situations where persons or organizations other than traditional livestock operators, such as insurers, financial organizations, or conservation organizations, acquire a ranch but may not at the moment be in the livestock business at that location. The Department believes this is in the public interest. As long as the base property is capable of supporting a livestock operation, the property should be eligible to be considered a base of livestock operations. The provision is not intended to remove the requirement for permit applicants to have base property, nor is the provision intended to circumvent BLM's authority to decide whether public lands should or should not be grazed.

The Department does not believe it is necessary for the base property to be supporting a livestock operation at present to be eligible to be considered base property. The proposal would allow for the acquisition or retention of a grazing permit or lease during periods when cattle are not actually being grazed, as long as it were possible to conduct grazing operations. For example, an operation could be in a start-up phase, planned to last for several years, prior to actually placing cattle on the land. While some permittees may not intend to initiate a grazing operation, under the proposal any extended conservation use would be allowed by BLM only if in conformance with approved land use plans or other activity plans and standards and guidelines.

The Department disagrees that contiguous property should automatically be considered capable, or that only contiguous properties should be considered capable of serving as a base. In some cases, there is more than one contiguous property, and a decision must be made as to which would serve best as base property. Also, some contiguous properties may not actually be capable of supporting grazing

operations, due to their size or character. For example, some may have been so sub-divided that they could no longer support such operations. Finally, statutory provisions in TGA clearly allow non-contiguous property to be considered base.

Under the final rule adopted today, property merely has to be capable of supporting an operation. Property currently serving as base property would in all likelihood be found to be capable of serving as a base of livestock operations.

The Department intends the provision regarding water to recognize that in some cases base waters need to be redeveloped, and the holders of those base waters should not lose base property status just because they had to redevelop the water.

For the reasons discussed above, the Department has decided to finalize the provision as proposed, with one minor change. The words ''would utilize'' is substituted for ''utilizes'' for consistency with the concept that base property need only be capable of supporting a grazing operation; no operation need be in existence at the time the property is determined to be suitable as base property.

Section 4110.2–2 Specifying Permitted Use

In the proposed rule, this section would have been renamed ''Specifying permitted use'' replacing the existing title ''Specifying grazing preference.'' It would also have been amended by replacing the term ''grazing preference'' with ''permitted use'' because the latter is more appropriate terminology to describe and quantify the number of AUMs of forage being allocated in a permit or lease. Also, the section would have been amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

The Department received a number of comments concerning the proposal to substitute ''permitted use'' for ''grazing preference'' and the corresponding change in policy in the concept of preference being limited to a priority position for the purpose of obtaining a grazing permit or lease. Comments ranged from those who felt the amendment was a good idea to those who believed the change would lead to financial insecurity for grazing operations. Others asked for definitions of the terms ''annual rangelands'' and ''ephemeral rangelands.''

The Department has decided to adopt the proposed provision, with several clarifying changes to reflect the initial intent of the proposed rule. Reference to authorizing use ''where livestock use is authorized based upon forage availability'' is moved to modify ''ephemeral rangeland.'' This clarifies that it is ephemeral rangelands where use must be determined based on actual forage availability. The word ''authorized'' is replaced by ''permitted'' in the third sentence for consistency with other provisions in this final rule, including the first sentence of this paragraph. The phrase ''activity plan, or decision of the authorized officer'' is added after ''land use plan'' to clarify that such plans or decisions may be the basis for determining permitted use. Finally, the word ''occasional'' is deleted in two places. While ephemeral rangelands are used only occasionally, due to lack of forage availability under normal conditions, annual rangelands are generally available for grazing. Since this provision refers to both types of rangelands it is inaccurate to use the term ''occasional'' to refer to forage availability.

The Department has considered the suggested wording changes and has determined that the proposed language best represents the intent of this section, with the exceptions noted. The new definition of the term ''preference'' is considered at § 4100.0–5.

The final rule does eliminate the concept of ''preference AUMs'' and replaces this term with the term ''permitted use.'' Permitted use is not subject to yearly change. Permitted use will be established through the land use planning process, a process which requires data collection and detailed analysis, the completion of appropriate NEPA documentation, and multiple opportunities for public input. Establishing permitted use through this planning process will increase, not decrease, the stability of grazing operations. The rule clearly defines preference to be a superior or priority position for the purpose of receiving a grazing permit or lease. Therefore, the Department does not anticipate there will be a decrease of financial stability for grazing operations.

There is no need to eliminate the concept of ''grazing preference'' totally. The concept of assigning first priority to certain persons is well-established in TGA and is an appropriate way to contribute to the stability of dependent livestock operations and the western livestock industry. The redefinition of preference is intended to resolve the confusion and misinterpretation of the concept that has developed over the years. In particular, the redefinition eliminates the shorthand jargon of ''preference AUMs'' that has developed to refer to the number of AUMs included in a permit or lease offered to a holder of grazing preference.

In response to commenters' suggestions, definitions of annual and ephemeral rangelands are added to this final rule. They can be found in § 4100.0–5. Regarding permitted use for annual rangelands, the Department has made some minor wording changes in this final rule for clarity.

The provisions pertaining to ephemeral ranges address designated ephemeral ranges—specific areas that have been recognized through BLM's provisions for ephemeral grazing. There are some smaller areas scattered throughout the desert southwest and Great Basin that produce amounts of forage sufficient for livestock grazing only occasionally and that are included in perennially-grazed allotments. These generally isolated areas can be recognized at the time livestock carrying capacity is determined and can receive further protection through the standards and guidelines that will be developed as a result of this final rule.

Section 4110.2–3 Transfer of Grazing Preference

In the proposal, this section would have been amended to reflect the new requirements of § 4110.1 that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. It would also have been amended by the addition of a new paragraph (f) requiring that new permits or leases stemming from the transfer of base property be for a minimum period of three years. The Department proposed this provision to enhance the protection and improvement of rangelands and to reduce the administrative work of processing transfers. The section would also have been amended by the substitution of the term ''permitted use'' for the term ''grazing preference'' where the reference pertains to an amount of livestock forage. This change is discussed at § 4110.2–2.

Most of the comments submitted on this proposed section addressed the 3-year limitation on transfers, which some viewed as arbitrary and without rational basis. Others read the proposal to mean that three years was an *upper* limit on transfers, and suggested that a 10-year term was needed to provide stability to the ranching operation, and to assist in obtaining operating capital from lenders. Others questioned the accuracy

of the cross-reference in the proposed language.

The Department disagrees that the 3-year minimum for transfers stemming from base property leases is arbitrary and without rational basis. This minimum is intended to reduce administrative burden and to promote good stewardship of the land. The TGA requires the Department to ensure ''orderly use, improvement, and development of the range.'' Rapid turnover of permit and lease holders is not consistent with this requirement. Persons who hold preference on an allotment but who sublease their public land grazing privileges to short term occupants rather than using the allotment for grazing cattle are not making productive use of the land nor promoting the stability of the livestock industry.

The Department does not envision that the 3-year minimum for transfers will impact the normal transactions in the livestock business. It will not interfere with the sale of private lands or with the subsequent transfer of the permit or lease to the new owner. The provision does not encumber private lands—it only affects the privileges associated with a grazing permit or lease. The effects of the 3-year limit on transfers on a public lands rancher's equity has been addressed in detail in the FEIS. The final rule provides for transfers of less than three years in specified circumstances, for example where base property changes ownership. Transfers are allowed for *up to* 10 years. Three years is a lower limit.

Regarding qualifications for a permit, transferees should be expected to meet the same qualification criteria as other public land permittees or lessees. Upon the completion of a transfer the transferee will become the permit or lease holder. Given that some short-term transferees may be less motivated to manage for the long-term health of the rangelands, ensuring that transferees have a history of compliance is of great importance.

The cross reference is intended to ensure that transferees meet the mandatory qualifications and own or control base property. While the language in the proposal, referring to general § 4110.2 is not incorrect, more specific references to the provisions which the transferee must meet, those in §§ 4110.2–1 and 2–2, may be more useful. The final language is modified accordingly.

The Department has decided to adopt a final version of the proposed rule with only one minor change, which reflects the new cross reference.

Section 4110.2–4 Allotments

In the proposed rule, this section would have been expanded to clarify that the authorized officer's existing authority to designate and adjust allotment boundaries included the authority to combine or divide allotments when necessary for efficient management of public rangelands. The proposal also would have specified that modification of allotments must be done through agreement or decision of the authorized officer. These two changes were intended to provide administrative clarity to the process. The proposal also would have added a requirement expanding consultation to the State having lands or responsible for managing resources in the area, and the interested public, as well as the affected grazing permittees or lessees. Finally, consistent with the change in definition of consultation, cooperation, and coordination discussed in § 4100.0–5, the proposal would have eliminated the words ''cooperation and coordination.''

The final rule adopts the language of the proposed rule except that the terminology ''consultation, cooperation, and coordination'' is included in the final rule.

Most of the comments on this proposed section addressed two issues: deletion of the terms ''coordination and cooperation'' and inclusion of States and, particularly, the interested public in the consultation process. Deletion of the terms ''coordination and cooperation'' was viewed by some commenters as a violation of the intent of Section 8 of PRIA which would prevent affected interests from exercising their right to consult, cooperate, and coordinate.

Some commenters objected to the inclusion of the interested public in the consultation process on changing allotment boundaries because they believed that it would interfere with currently established boundaries, create uncertainty for operators, and decrease the incentive to maintain improvements. Other comments suggested that consultation on allotment boundary changes should be with the RAC, not the interested public.

Few comments were addressed specifically to the provision allowing the authorized officer to combine or divide allotments. Commenters asked how deeded lands within allotment boundaries would be handled, and stated that adjusting allotment boundaries was a taking of private property. Others asked who would bear any expenses associated with boundary changes. Still others raised takings issues, and asked who would bear the expense associated with boundary changes.

As noted above in the discussion of § 4100.0–5, because of the confusion caused by the proposed deletion of ''cooperation and coordination'' the Department has decided to use the full phrase ''consultation, cooperation and coordination'' in cases where broad based input in agency deliberations are encouraged.

The Department believes that inclusion of the interested public is important because the public is a stakeholder in the administration of the public lands. Additionally, decisions regarding designation and adjustment of allotment boundaries are subject to NEPA, and the public must be involved in decisions subject to the NEPA process, because of the requirements of that statute. Currently, BLM notifies all affected interests of actions such as allotment boundary changes. The Department does not expect there will be significant changes in current BLM procedures to accommodate the requirements for consultation with the interested public, beyond including any interested persons in such routine notifications. Thus, the Department does not anticipate any increased uncertainty or decreased incentive to maintain improvements. While RACs might be consulted in certain cases, such as a controversial adjustment or where significant funding is required, the Department does not believe it is feasible to involve RACs in every routine action.

The Department envisions that most adjustments in allotment boundaries would have little effect on ranch units. Typically, such adjustments are to realign boundaries to be consistent with actual use of the allotment. For instance, an allotment boundary may be adjusted to allow an adjacent ranch to make use of public lands that because of natural physical barriers are not readily available to the current permittee. Adjustments in allotment boundaries will in no way affect the ownership of private lands.

The Department does not believe that this provision would involve any ''takings'' issues. Permits and leases to graze public lands within grazing allotments do not constitute property rights. Adjustments in allotment boundaries that result in a transfer of grazing preference will be subject to the provisions of § 4120.3–5 pertaining to the assignment of range improvements and corresponding compensation for such improvements. Takings issues are addressed further in the General Comments discussion in this preamble.

Decisions on who should bear the expense of constructing fences made necessary by adjustments in allotment boundaries will be made on a case-by-case basis. Depending on the circumstances, BLM, the grazing permittee or lessee, or others may bear the costs. For instance, an adjustment to an allotment boundary made at the request or for the benefit of a permittee may be made subject to the permittee's acceptance of fencing costs. Where a fence is to be constructed to enhance the establishment or re-establishment of, for example, bighorn sheep, BLM or State wildlife management agency may assume the costs.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one change. The terms ''cooperation and coordination'' are included in the opening sentence.

Section 4110.3 Changes in Permitted Use

This section would have been amended by replacing the term ''grazing preference'' with ''permitted use.'' This change is discussed at § 4110.2–2. The section would also have clarified that changes in permitted use must be supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer. This change would have broadened the sources of information that could be relied upon by BLM as a basis for changing permitted use.

The Department received a number of comments on this section. The majority of the comments dealt with the information that BLM would use to establish permitted use. Other commenters added that BLM should consider the vegetation impacts that come from other resource uses in calculating permitted use. Some commenters stated that no grazing should be permitted until an accepted monitoring plan is carried out or that permitted use in riparian areas should be evaluated every three years and adjusted as needed.

The Department agrees that professionally accepted and scientific information is needed to justify changes in permitted use. Many factors affect the type of information needed, the appropriate level of detail, and the time span over which such information should be acquired—resource conditions, resource values, climate, local environmental conditions, etc. The BLM can obtain information from a number of sources in evaluating the need to change permitted use, in addition to the traditional source, monitoring data. Other valid sources of information include direct observation, ecological site inventory and trend data. There is no sound scientific reason to limit the authorized officer's flexibility by restricting him or her to one source of information or to place specific timeframes for monitoring in the regulations.

Changes in permitted use are subject to consultation with permittees, States having lands or managing resources in the area, and interested publics. Furthermore, permittees and lessees can appeal final decisions regarding changes in permitted use (*See* §§ 4110.3–1 and 4110.3–2 and subpart 4160). Given these constraints, the Department does not agree that the authorized officer has too much latitude.

The Department agrees that other resource uses should be evaluated in calculating permitted use. At the present time, wildlife and wild horse and burro utilization levels are used in the calculations of permitted use within an allotment.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the following minor changes. The phrase ''assist in'' is added before the words ''restoring ecosystems to properly functioning condition.'' These words have been added to emphasize that the Department does not expect that rangeland health will be restored as a result of single grazing management decisions, such as changes in permitted use on one permit. Rather, restoration of rangeland health will result from a series of decisions and actions over time, including actions pertaining to uses other than grazing, all of which will work together to establish significant improvements in the condition of the rangelands.

Further, the phrase ''to conform with land use plans or activity plans'' is added as one objective of changes in permitted use to clarify that, under 43 CFR Part 1600 and provisions in subpart 4120 of this final rule, BLM is required to conform with decisions made in the land use plans or other activity plans. Where grazing use does not conform with such plans it must be modified.

Section 4110.3–1 Increasing Permitted Use

The proposed rule would have revised this section by requiring that a permittee, lessee or other applicant be determined to be qualified under subpart 4110, in order to be apportioned additional forage under subsection (c), by substituting the term ''permitted use'' in place of ''grazing preference,'' and by clarifying the requirements for consultation. Also, reference to a permittee's or lessee's demonstrated stewardship would have been added to factors to be considered in allocating available forage.

The final rule adopts the text of the proposed rule, except that the final rule requires that ''consultation, cooperation, and coordination'' take place prior to the apportionment of additional forage under paragraph (c).

The largest group of comments on this section asserted that the interested public should not be involved in BLM's decisions to increase forage temporarily. Others expressed concern about involvement of State agencies or that increases should be subject to local government land use plans. Other commenters stated that considering demonstrated performance and compliance made decisions to increase permitted use uncertain. Others stated that increases should be processed using the established consultation, coordination and cooperation procedures including Section 8 consultation.

The Department believes that it is appropriate to involve the public in the management of the public rangelands. Similarly, State and local governments will be given an opportunity to comment on such decisions. This is consistent with Section (202)(f) of FLPMA. Thus, any decisions to increase or decrease permitted use or forage within a grazing allotment will include not only the permittee but also the interested public and the State having lands or managing resources in the area. However, the BLM authorized officer will retain the authority and responsibility to make final decisions on increased permit usage.

Additional forage available for livestock grazing on a sustained yield basis is first apportioned to permittees or lessees in proportion to their stewardship efforts which resulted in increased forage production. Any additional forage (AUMs) following this apportioning could be available to other permittees/lessees or outside interested applicants, assuming they are qualified under § 4110.

Record of performance and compliance are criteria for adjudicating conflicting applications, not for allocating additional forage, unless the grazing allotment is a community grazing allotment involving several different permittees/lessees. Any final decision by the agency can be appealed under the procedures set forth in subpart 4160.

The Department agrees that increases should be done with consultation, coordination, and cooperation, and the

final rule makes this change. For further discussion, see § 4110.0–5. Otherwise, the provision is adopted as proposed.

Section 4110.3–2 Decreasing Permitted Use

The proposed rule would have amended this section by revising the heading to change the term ''active use'' to ''permitted use.'' This change would have been consistent with the proposed definitions of these two terms, as discussed at § 4100.0–5. Paragraph (b) also would have been amended to provide that when monitoring and field observations show grazing use or patterns of grazing use are not consistent with the fundamentals of rangeland health (titled ''national requirements'' in the proposed rule) or standards and guidelines or are otherwise causing an unacceptable level or pattern of utilization, the authorized officer must reduce permitted grazing use or otherwise modify management practices. Paragraph (b) would also have added ecological site inventory and other acceptable methodologies to monitoring as ways of estimating rangeland carrying capacity as the basis for making adjustments in grazing use. Subsequent adjustments could be made as additional data were collected and analyzed.

Paragraph (c) would have been deleted to remove the provision requiring the authorized officer to hold those AUMs comprising the decreased permitted use in suspension or in nonuse for conservation purposes. Existing paragraph (a) of this section, which was not proposed to be changed, would continue to provide for the temporary suspension of active use due to drought, fire, or other natural causes, or to installation, maintenance, or modification of a range improvement.

Some commenters stated that the proposed language is inconsistent with legal requirements. Some commenters stated that the term ''corrective action'' is ''vague and subjective.''

Numerous commenters stated that it is necessary for the authorized officer to determine the cause of range problems before decreasing permitted use and questioned whether methods other than monitoring would be suitable for determining carrying capacities. Some of these comments suggested correcting other uses, such as wild horses and wildlife, before permitted use is reduced. Some commenters expressed concerns on the monitoring and inventory methodologies BLM would use. Others stated that reductions should be placed in suspended use rather than eliminated.

This regulation is not inconsistent with statutory requirements. A discussion pertaining to legal authorities and requirements is presented under ''General Comments.''

The BLM authorized officer will make a determination on a case-by-case basis as to what corrective actions are appropriate. In some cases the corrective action may not result in a reduction in permitted AUMs. For instance, a change in use periods or a temporary suspension in use may be determined to be the appropriate action. In other instances, data may show that other uses of the public lands need to be modified. The Department believes that it would be inconsistent with its mandate to manage the public rangelands to allow an allotment to continue to deteriorate while prolonged monitoring studies are conducted in those instances where other reliable measures of rangeland health indicate a need for action.

BLM uses a variety of accepted methodologies and available data to determine carrying capacities of grazing allotments and to identify unacceptable levels or patterns of use. Typically, findings of one form of data collection are corroborated with other data before making reductions in livestock use. The BLM Technical Reference 4400–5 (*Rangeland Inventory and Monitoring Supplemental Studies*) describes acceptable methodologies for estimating forage production. Additionally, BLM intends to develop rapid assessment techniques that can be used to evaluate rangeland health as represented by established standards and the guidelines to be followed in meeting standards and the fundamentals of rangeland health. (*See* subpart 4180.)

Although in some cases reductions made under this section of the rule may be carried in temporary suspension, the Department does not believe that it serves the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit, unless there is a realistic expectation that the AUMs can be returned to active livestock use in the foreseeable future. Should additional forage become available there are provisions at § 4110.3–1 to address increases in permitted use. Decisions resulting in a decrease in permitted grazing use are subject to the administrative remedies outlined in subpart 4160, including a right of appeal.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one minor change. The term ''authorized grazing use'' in paragraph (b) is changed to ''permitted grazing use,'' to make this provision more consistent with the definitions included in this final rule.

Section 4110.3–3 Implementing Reductions in Permitted Use

The proposed rule would have renamed the section and removed existing paragraph (a) and other requirements for phased-in reductions in grazing use. This proposal was intended to provide the authorized officer more flexibility to deal with situations in which immediate action was necessary to protect rangeland resources; phase-in periods for reduction in grazing use could still have been available if determined by the authorized officer to be appropriate.

The proposal would also have redesignated existing paragraph (b) as paragraph (a) and amended it by removing the requirements to phase-in reductions in use over a five year period. The proposal also would have removed the terms ''consultation, coordination and cooperation,'' and ''suspension of preference'' and added in their place the terms ''consultation'' and ''reductions in grazing use,'' respectively. These changes would have been consistent with changes in definitions discussed at § 4100.0–5. It would also have provided, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction.

Existing paragraph (c) would have been redesignated as paragraph (b) and amended to remove the word ''temporary'' because that term implies that protection would be needed for only one season. In actuality, the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought has passed. Other minor amendments would have clarified action to be taken by the field manager and made the language concerning provisions for making decisions effective when necessary to protect the resource consistent with language on that provision in proposed subpart 4160. Language would have been added specifying that such decisions would have remained in effect pending any appeal of the decision, unless a stay were granted by the OHA. The overall intent of the changes in this paragraph was to provide the authorized officer with the authority needed to implement decisions to close allotments or portions of allotments or modify authorized grazing use when immediate action was

necessary to protect rangeland resources.

A number of commenters stated that the phase-in of reductions should not be eliminated because it promotes industry stability and gives livestock operators a chance to adjust their operation. Others suggested that the authorized officer should restrict access for a temporary period of time rather than making reductions in ''emergency'' situations. Commenters also objected to removal of the terms ''coordination and cooperation'' in redesignated paragraph (a) as being a violation of PRIA. Others objected to involvement of the interested public.

Numerous commenters raised concerns over the lack of documentation required to implement reductions in grazing use, and stated that prolonged monitoring should be required. Others stated that ''full force and effect'' provisions should not apply to reductions and that the RACs should be consulted prior to reductions and emergency closures.

The Department will implement any increase or decrease as outlined in the final rule by documented agreement or by decision of the authorized officer. These documents may include a provision for a phase-in period. However, in some situations, immediate action is needed to protect rangeland resources, including wildlife and riparian areas, because of conditions such as drought, fire, flood, insect infestation or other conditions that present an imminent likelihood of significant resource damage. The Department has concluded that in these situations immediate corrective action is warranted, without the constraints of a phase-in period. Of course, even where a decision is implemented immediately, an adversely affected party would retain the ability to petition the OHA for a stay of the decision.

The Department disagrees that the provisions of this section are inconsistent with any statutory requirements. These issues are covered more fully above in the General Comments section of the preamble. The words ''cooperation and coordination'' have been added to paragraph (a). As noted at § 4100.0–5, the Department has decided to use the phrase ''consultation, cooperation, and coordination'' in cases where broad based input into agency deliberations is sought. The Department believes that such input is critical to effective management of public rangeland.

The authorized officer will make decisions about implementing reductions in permitted use based on monitoring, field observations, ecological site inventory or other acceptable data. The final rule at 4110.3–2(b) covers adequate monitoring and documentation necessary to implement reductions. The Department believes that the language in the rule expanding the sources of information that the authorized officer can use to implement such changes is desirable to provide flexibility to the process and to ensure that the authorized officer can take immediate action to protect the resource, including making decisions effective immediately or on a specific date, when conditions require it.

While in some specific circumstances a RAC may be involved in a decision to reduce permitted use, the Department does not believe it is feasible to consult the councils for every grazing management decision.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with the following changes. The term ''cooperation and coordination'' is added back into paragraph (a). In paragraph (b), the phrase ''when continued grazing use poses a significant risk of resource damage from these factors'' is amended to read ''when continued grazing use poses an imminent likelihood of significant resource damage.'' This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Such decisions may be placed into effect upon issuance or on a specified date and will remain in effect during any appeal unless a stay is granted.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would have amended paragraph (a) by removing the words ''suspend'' and ''suspension'' and by changing the term ''grazing preference'' to ''permitted use'' consistent with other changes throughout the proposal. As a result, decreases in public land acreage available for grazing would no longer have associated forage allocations carried on a permit or lease as suspended use.

The major concerns commenters raised with respect to this section involved compensation for lost range improvements and AUMs and the elimination of the terms ''suspend'' and ''suspension.'' The existing regulation provides for compensation to the permittee for his or her contribution in the permanent range improvements developed within areas that are being devoted to a public use that precludes livestock grazing. Compensation is not required for the reduction or loss of available livestock forage due to a change of use, which would include cases of use being reduced to protect the rangelands. This provision is not being changed.

The final rule has removed ''suspend'' and ''suspension'' because it does not serve the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit unless there is a realistic expectation that the AUMs can be increased due to increased forage availability. If such numbers are carried, the permittee or lessee may have an unrealistic expectation for increases in AUMs in the future. In cases where the acreage is being reduced, it is not likely that such an increase will occur. Therefore, there appears to be no good reason to refer to suspended AUMs in the regulation covering decreases in land acreage. If rangeland conditions improve to the extent that increased usage is possible, the provisions of § 4110.3 can be used to increase permitted use accordingly.

All decisions pertaining to a grazing permit or lease will involve consultation with the affected permittee and affected interests. All final decisions of the authorized officer will be subject to the administrative remedies discussed in subpart 4160, including the right of appeal.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4120.2 Allotment Management Plans and Resource Activity Plans

The proposed rule would have amended this section by revising the heading and by adding reference to other activity plans that may prescribe grazing management. This provision was intended to reflect BLM's belief that activity plans that provide direction for the major resources and uses of a particular area are more effective management tools, and are more consistent with an ecosystem approach, than are single source planning documents.

The proposed rule would have clarified that draft AMPs, or other draft activity plans, could be developed by other agencies, permittees or lessees, or interested citizens. This provision was intended to broaden the base of participation in the planning process, and to provide interested parties, including interested citizens, an opportunity to facilitate the planning process through such participation.

Another proposed provision would have clarified that AMPs or other activity plans, including those prepared

by other parties, would not have become effective until approved by the authorized officer. This provision is consistent with authority granted to the Secretary by 43 U.S.C. 1752.

Paragraph (a) would have been amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process. This change would have been made for conformance with the proposals on subpart 1780, and with the Department's intent to broaden the base of participation in the grazing management process.

Another amendment would have changed the existing provision regarding the flexibility granted to permittees or lessees under an AMP to specify that it would be determined on the basis of demonstrated stewardship. The requirement for earning flexibility was intended as an incentive for grazing operators to manage for the improvement of rangeland conditions. Additionally, it was intended to recognize that permits and leases operated by good stewards require less administration.

The proposed rule would have clarified that the inclusion of other than public lands in an AMP or other activity plan is discretionary. The use of ''shall'' in the existing regulation could have been read to require inclusion of such lands.

The amendment would also have specified that a requirement of conformance with AMPs be incorporated into the terms and conditions of the grazing permit or lease. This proposal would have changed a provision in existing paragraph (c) which required that the plan itself, rather than a requirement to conform with the plan, be included in the terms and conditions of the permit or lease. This provision was intended to conform with existing practice regarding how AMP decisions are reflected in permits and leases.

Proposed paragraph (c) would have been a new provision. It would have provided that the authorized officer give an opportunity for public participation in the planning and environmental analysis of proposed AMPs affecting the administration of grazing and give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing them. It would also have provided that the decision document following the environmental analysis would be considered the proposed decision for the purposes of subpart 4160 of this part. This provision was intended to streamline administrative processes by allowing BLM to combine NEPA analysis with the activity plan process. Additionally, the provision assists the grazing permittees and lessees by clarifying that decisions regarding AMPs can be appealed through the standard appeals process specified in subpart 4160.

The Department received a number of comments on this section. Most frequent comments reflected perceptions that the proposed rule would eliminate the requirement that BLM ''consult, coordinate and cooperate'' with the permittee. Many stated that to allow participation by the interested public would severely delay the process. Others said some provisions, such as using resource activity plans to serve as the functional equivalents of AMPs, are outside the Secretary's jurisdiction. Some respondents raised questions such as whether development of the AMP was discretionary, and whether standards and guidelines would be imposed retroactively on existing plans.

A number of other comments were received on various details of the process and scope of AMPs and other activity plans. These comments will prove useful in developing subsequent guidance for BLM's field management staff.

The proposed rule included the term ''consultation, cooperation and coordination'' in the requirements for preparing AMPs and other activity plans under paragraph (a) but used the term ''consultation'' in paragraph (e) pertaining to revising and terminating such plans. In the rule adopted today, the term ''consultation, cooperation and coordination'' is substituted for ''consultation'' in paragraph (e) and remains as proposed in paragraph (a).

The Department disagrees that involvement of the interested public will delay the final outcome of the planning process. While at some stages, involvement of the interested public in AMPs may slow the process, their involvement also will result in fewer drawn-out protests and appeals and more rapid implementation on the ground. The Department intends that interested parties will be involved in all levels of planning, including the development of land use plans and the preparation of site-specific management activity plans such as AMPs. It remains the responsibility of BLM to make timely decisions. These rules do not change existing time frames processes such as protests or appeals.

The provision allowing resource activity plans to serve as the functional equivalent of AMPs is not outside the Secretary's authority, and the final rule retains this provision. The concept of more integrated resource activity plans better meets the statutory requirements of FLPMA and NEPA, provides a more efficient way to plan for the management of a specified area, and allows more complete analysis of public comment and cumulative effects. Activity plans that serve as the functional equivalent of AMPs will meet the FLPMA definition of AMPs (43 U.S.C. 1702(k) and 1752(d)) by addressing the specific conditions of rangelands within the grazing allotments covered by such plans.

The Department does not intend that standards and guidelines will automatically be incorporated into plans upon the effective date of this rule. Rather, standards and guidelines will be incorporated into individual plans as the need for modification of the plans is identified. Subpart 4180 directs the authorized officer to take action no later than the start of the next grazing year to initiate significant progress toward rangeland health in cases where the authorized officer determines that existing management practices are failing to ensure significant progress toward meeting the standards or toward conforming with the guidelines. Under this provision, terms and conditions of existing permits could be revised, under the procedures specified in new § 4130.3–3, to incorporate new terms and conditions to address resource condition issues. Such decisions by the authorized officer will be subject to rights of appeal under subpart 4160, as will decisions to adopt, terminate or modify an AMP or its functional equivalent.

In accordance with the above discussion, § 4120.2 is adopted as proposed with the exception of minor edits, the addition of the explicit reference to other activity plans serving as the functional equivalent of AMPs, and the substitution of the term ''consultation, cooperation and coordination'' for the term ''consultation'' in paragraph (e).

Section 4120.3–1 Conditions for Range Improvements

The proposed rule would have amended this section by inserting a new paragraph (f) specifying that range improvement projects would be reviewed in accordance with NEPA requirements, and that the decision document issued as a result of that review would be considered the proposed decision for purposes of subpart 4160 of this part.

This provision would not have introduced any new requirement. Rather, it would have clarified in these

regulations requirements that already exist under NEPA. The provision would also have ensured that the same document would have been used to satisfy NEPA requirements and to provide a final—and appealable—decision to a permittee or lessee. This would have prevented duplication of effort on the part of the agency or the permittee or lessee.

In effect, the provision that the NEPA decision document would have served as the proposed decision of the authorized officer for purposes of subpart 4160 would have directed appeals of those decisions through the administrative remedies process provided in that subpart. Under the proposal, that subpart would have provided an opportunity for a field hearing on the facts of the case by an administrative law judge, rather than requiring the appeal to go directly to the Interior Board of Land Appeals. This would have streamlined the appeals process.

The Department received few comments on this section. Most expressed concern that following the NEPA process would result in unnecessary delay in approving environmentally sound range improvement projects, or would discourage such improvements from being made.

The Department has decided to adopt this provision as proposed, with one minor change. The term ''range improvement'' is added between the words ''cooperative'' and ''agreement'' in paragraphs (b) and (e). This term was added for consistency with other provisions in the final rule. This change clarifies that the cooperative agreements being referred to are range improvement agreements, not cooperative agreements between BLM and the States, or any other type of cooperative agreement.

The Department does not expect that the NEPA review process will unduly delay implementation of range improvement projects. The rule retains the NEPA requirement. Following the NEPA process is a requirement of law and is current practice; it is not just a requirement of this regulation.

Section 4120.3–2 Cooperative Range Improvement Agreements

In the proposed rule, the heading of this existing section would have been revised to clarify that this section deals with cooperative range improvement agreements as opposed to ''cooperative agreements'' with other Federal or State agencies. The proposed rule would have amended this section to specify that the United States would have title to all new permanent grazing-related improvements constructed on public lands. The proposed section would have provided that title to temporary grazing-related improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. This change would have conformed with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with existing Forest Service policies. The amendment would not have changed any agreements currently in effect.

The Department received many comments on this section. Some commenters expressed concern that the provisions would lead to fewer range improvements and declining ranch values, range conditions and wildlife populations. Others questioned if reconstructions were considered new improvements and whether existing improvements would be affected by the requirement that the United States retain title to improvements. Many stated that the provision could afford environmental groups the opportunity to take control of range improvements and felt livestock operators should be consulted if improvements are planned. Others raised takings questions.

The Department has adopted a modified version of the proposal. The title of the final rule is changed to clarify that the section affects cooperative range improvement agreements. Paragraph (b) is revised by adding examples of types of permanent range improvements that will be authorized by cooperative range improvement agreements. The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee, or shared in proportion to the amount of contribution, in the case of situations covered by § 4120.3–2. This final rule clarifies further these provisions regarding temporary and permanent improvements. The United States will have title to new permanent range improvements. The rule conforms BLM policy with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with current Forest Service administrative provisions.

Additionally, the adopted language clarifies that the provision applies to cooperative range improvements agreements after the effective date of the rule. The final rule does not adopt proposed paragraph (c), regarding temporary structural range improvements, as that paragraph duplicates requirements in final § 4120.3–3, Range improvement permits.

Finally, a statement is added to clarify that any contribution made by a permittee or lessee to such a permanent improvement will be documented by BLM to ensure proper credit for the purposes of § 4120.3–5, Assignment of range improvements, and § 4120.3–6(c), Removal and compensation for loss of range improvement.

The Department disagrees that this provision will result in fewer range improvements and declining range values, range conditions, and wildlife populations. The Forest Service's experience does not support this contention. Improvements add to the management effectiveness and the value of the ranch operation. Any contributions the permittee makes to range improvements are recognized and documented. The incentive for a permittee to invest in range improvements is that it is in his or her financial interest to improve use of the grazing allotment.

Reconstruction within the bounds of the original range improvement permit will not require a new agreement. However, work that is outside of the original range improvement permit or authorization will be considered a new improvement. Determinations as to whether a particular instance is a reconstruction or a new construction will be made on a case-by-case basis.

The Department disagrees that this provision will allow other parties to take control of range improvements. New permanent range improvements will be issued by cooperative range improvement agreement with the permit holder, and will be in the name of the United States, regardless of who the permittee is. Responsibilities of each cooperator, the grazing permit holder and the United States will be documented in the cooperative range improvement agreement.

The provision does not limit the Secretary's authority to cooperate with other agencies and organizations to plan, develop, and maintain improvements on the public lands to the benefit of other public land resources. Where such developments may affect livestock operations, permit holders will be consulted. Decisions to determine the need for range improvements will not be affected by this provision. The rule continues the policy that range improvement needs may be identified by the operator, BLM, or interested members of the public. The responsibility for cost to be borne by the

respective cooperators in new range improvement projects will be described in the cooperative range improvement agreement, and will be determined on a case-by-case basis.

For discussion of takings issues, see the General Comments section of this preamble.

Section 4120.3–3 Range Improvement Permits

Paragraph (a) of this section would have been amended to change existing provisions authorizing permittees or lessees to apply for a range improvement permit to install, use, maintain, or modify range improvement projects. Two changes would have been made to this provision. First, the reference to permanent improvements would have been deleted. This change would have been consistent with the proposed revisions to § 4120.3–2 above, which would have consolidated all provisions regarding permanent improvements in that section. Secondly, the phrase ''within his or her designated allotment,'' which referred to improvements needed to achieve management objectives, would have been changed to ''established for the allotment in which the permit or lease is held.'' This change was intended to provide clarity to the provision and to remove the gender references in the existing text.

Existing paragraph (b) would have been amended to add a list of types of improvements the Department considers to be temporary. The amendment would have clarified that permanent water improvement projects would be authorized through cooperative range improvement agreements consistent with existing Department policy. The proposed rule would have clearly established that title to permanent range improvements authorized after the effective date of the rule would be held by the United States. It would also have added a companion provision specifying that a permittee's or lessee's contribution to an improvement would have been documented by the authorized officer, to ensure proper credit for purposes of §§ 4120.3–5 and 4120.3–6(c).

The proposed rule would have removed existing paragraph (c). The proposal would have created a new paragraph (c). This paragraph would have provided that the permittee or lessee must cooperate with other operators that may be temporarily authorized to use forage. Furthermore, this new provision would have specified that a permittee or lessee would be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use; the authorized officer may resolve questions concerning compensation. Where a settlement cannot be reached, the authorized officer would issue a temporary grazing authorization to compensate the preference permittee or lessee. The intent of this proposal was to protect the interest of the permittee or lessee in range improvements in those infrequent cases where a third party makes use of the allotment.

Many commenters questioned whether the proposal was within the authority of TGA. They also stated that the provisions pertaining to title of range improvements would remove incentives for permittees to make improvements, would make it difficult to obtain financing, would adversely affect wildlife and local economies because fewer improvements would be built, and could jeopardize existing ''Section 4'' (TGA) permits.

Other commenters were concerned that the Department would require permittees or lessees to construct range improvements at their expense. Some commenters asked what requirements there would be for maintenance. They also expressed concern about whether there would be a problem of access to improvements to which they did not have title.

Commenters expressed opposition to provisions in proposed paragraph (c) because, in their view, it seemed to be a new provision to allow nonpermittees to graze within another's grazing allotment.

Under the provisions adopted here, livestock operators may hold title to removable and temporary improvements authorized under range improvement permits. Such improvements are largely funded by livestock operators.

The Department disagrees with the assertion that the provisions of this section are outside the Secretary's authority as established in TGA. Section 4120.3–3, as proposed and adopted in this final rule, implements the provisions of TGA found at 43 U.S.C. 315. The Department also disagrees with the contention that the title provisions will significantly affect either the amount of permittee and lessee contributions to range improvement or their ability to secure financing for range improvement. The installation of range improvements will remain in the permittee or lessee's interest as long as the improvement assists in the management of the livestock operation or results in an improvement in the condition and long-term productivity of the range. The Forest Service has long had a policy of retaining title to permanent improvements and has not observed that private contribution has been discouraged. Similarly, financial institutions, in reviewing loan applications, consider the value of the range improvement in terms of how the improvements will affect the profitability of the ranch operation.

This rule affects the title of improvements authorized after the effective date of this rule. Title to currently authorized improvements will not be affected.

The provisions pertaining to the use of range improvements by parties temporarily authorized to use an allotment would not have established new policy toward the *issuance* of nonrenewable permits. Proposed paragraph (c) would merely have made explicit how the renewable permit or lease holder's interests in range improvements would be protected in those instances where another party is authorized to graze within the allotment on a temporary nonrenewable basis.

In accordance with the above discussion, the Department has decided to adopt this section as proposed, with one major change. In the rule as adopted, the Department has removed reference to permanent water developments from this section. The provision dealing with water improvements and their authorization through cooperative range improvement agreements is moved to final § 4120.3–2, thus consolidating all provisions regarding permanent improvements in that section.

The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee. This final rule clarifies further these provisions regarding temporary and permanent improvements. Because the discussion of permanent improvements no longer occurs in this section, the provision regarding documentation of a permittee's or lessee's contributions to such improvements is no longer pertinent to new range improvement permits. However, the provision for documenting contributions is added to § 4120.3–2.

Two other minor changes were made in the final language. The surplus word ''established'' is not included in final paragraph (a). For clarity, the Department has added ''structural'' as a modifier of ''temporary improvements'' in final paragraph (b).

Section 4120.3–8 Range Improvement Fund

The proposed rule would have added a new section to this part that addressed the distribution and use of the range betterment funds appropriated by Congress through Section 401(b) of FLPMA for range improvement expenditure by the Secretary. The proposed amendment would have provided for distribution of the funds by the Secretary or designee; one-half of the range improvement fund would have been made available to the State and District from which the funds were derived, the remaining one-half would have been allocated by the Secretary or designee on a priority basis. All range improvement funds would have been used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would have corrected the imbalance by ensuring that the funds are distributed on a priority basis.

The proposed rule would have clarified that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives. Maintenance of range improvements and costs associated with the contracting of range improvements was added to the list of activities for which range improvement funds may be used. Maintenance was an allowable use of range improvement funds prior to a policy change made in 1982.

The proposed rule would have required consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs would also have been consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities. The provisions are adopted as proposed.

The Department received a few comments on this section. Most concerns were about how funds would be expended. Some commenters asserted that the proposal was inconsistent with the Department's statutory authority, that all funds, not just a portion, should return to the District or State from which they came and that all funds should go to construction, not to planning or projects not directly related to livestock production. Others stated that all funds should be used for ecosystem enhancement projects or supported the concept that some funds should be spent on projects to rehabilitate the range and distributed on the basis of priority needs.

Commenters also stated there should be requirements to spend funds in a cost-effective manner. Some supported involvement of the RACs and the interested public in the decisionmaking process on expenditure of the funds. Other commenters asserted that the change will result in fewer improvements being constructed, and that BLM should not require permanent range improvements be constructed at the expense of a permittee or lessee as a requirement to obtain or hold a permit or lease.

The Department's authority for this provision is found in Section 401 of FLPMA, which directs that 50% of the monies put in the range betterment account be authorized to be appropriated and ''* * * made available for use in the district, region, or national forest from which such monies were derived * * *'' It further provides that the remaining 50% ''* * * shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs.'' While it has been common practice for the Secretary to return the discretionary 50% to the District of origin in recent years, that is not required in FLPMA. The Department intends to allocate the discretionary 50% on a priority basis to better meet BLM management objectives and respond to resource condition concerns.

FLPMA also provides that funds can be expended on projects other than those directly related to livestock-oriented projects. The act specifies that ''* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *'' FLPMA also allows the expenditure of funds for activities necessary to put projects on the ground such as project planning, design, layout, modification and monitoring. An important goal of the Department in expending the range betterment fund will be to improve the health of the public rangelands. However, all uses authorized by FLPMA will remain valid under this rule including improvements that primarily benefit livestock management.

FLPMA does not specify in what proportions the funds should be spent. The Department believes that the provision, adopted today, providing the maximum flexibility allowed by law in the distribution and use of these funds, will improve the effectiveness of the program and result in increased overall improvement to the public rangelands. Grazing advisory boards received an accounting of the fund expenditures. It is anticipated that RACs will be afforded the same information.

Because under the rule as adopted the Department will be able to expend some funds on a priority basis, rather than returning 100% of the funds to the State or District of origin, the distribution of range improvement projects may shift somewhat. However, this does not mean that the total number of projects will decline. The BLM will not require livestock operators to fund the construction of range improvements. Operators' participation in the development of range improvements will be voluntary. However, there may be some cases where BLM will have to alter grazing use in the absence of needed improvements.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing on Public Lands

Today's action adopts with one addition this section of the proposed rule which provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. This section is prospective, clarifies BLM's water rights policy for livestock watering on public lands, and makes BLM policy consistent with that of the Forest Service.

The section does not create any new Federal reserved water rights, nor does it affect valid existing rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and Section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the proposal does not change

existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where State policy permits it; for example, the Wyoming policy is consistent with this final rule.

Some comments questioned whether the language violates State or Federal law. Some commenters questioned whether the language would deny permittees the full use of water and what the impact would be on transferring the point of use of water from or to public lands. Some commenters suggested that the regulation should state that BLM will not have special priority in water adjudications and that the regulation does not affect water on private lands.

The Department's intent in adopting this section is to provide consistent water policy guidance to BLM personnel. It is not the Department's intent to create any new Federal reserved water right, nor does it affect valid existing rights. It has been BLM's policy to seek water rights under State substantive and procedural requirements; the language adopted today does not alter that policy.

The language adopted today clarifies that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Questions such as qualified applicants, what constitutes beneficial use, and quantity and place of use are addressed through State procedural and substantive law. Thus, the Department is not attempting, through the language adopted today, to prejudge the outcome of proceedings under State water law. For the same reason, the Department has not adopted suggestions to include language relating to priority of rights or water rights on private lands. These matters are addressed by State substantive and procedural requirements.

Other comments questioned whether the provision would have a negative impact on adjacent private property, wildlife, and range conditions. Clarification of BLM water rights policy regarding livestock watering on public lands should not have a negative impact on adjacent property. The provision does not address water rights on non-Federal lands. The language adopted today also does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses. The Department has concluded that wildlife and range conditions will be benefited by clarifying BLM water policy. It is the Department's intent in adopting the language of this section to promote the use of the public lands on a sustained yield basis for multiple use purposes.

Section 4120.5 Cooperation in Management

The proposed rule would have added a new section on cooperation in management to recognize and regulate cooperation with, among others, State, county, Indian tribal, local government entities and Federal agencies. The provision is adopted as proposed.

Very few comments were received on this section, and most commenters combined their comments with comments on § 4120.5–1. Some commenters requested that ''coordinate and consult'' be added after ''cooperate'' and that the Department remove references to ''institutions, organizations, corporations, associations, and individuals.'' Others asked that the Department give special consideration to the customs, culture and economic impact of projects on existing local communities.

The Department will ensure public involvement and cooperation, in the management of the public lands to the maximum extent possible. All citizens have a stake in the management of the public lands. FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent possible under Federal law and the purpose of the Act.

The section deals with the requirement for cooperation in management. There is no basis to add the terms ''coordinate and consult.'' Section 315 of TGA specifically calls for ''cooperation'' with agencies engaged in conservation or propagation of wildlife, local associations of stockmen, and State land officials.

All proposed project and planned actions undertaken to implement these regulations will require more local level assessments. Regulations dealing with impact assessment require consideration of socio-economic impacts.

Section 4120.5–1 Cooperation With State, County, and Federal Agencies

This section would have recognized existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships. The TGA, Noxious Weed Control Act, FLPMA, PRIA and other statutes and agreements require cooperation with State, county and local governments, and Federal agencies.

Many commenters wanted the Department to strengthen the language requiring cooperation with local and county governments and their land use planning efforts. Other commenters wanted the list to include private land owners, only groups that can prove an affected interest in the livestock business or only individuals who have invested as much money as the livestock operators. Many commenters requested that the Department strike references to the Wild Free-Roaming Horse and Burro Act and expressed that Animal Damage Control and similar predator control agencies should be listed as a cooperating partner.

Other commenters wanted the Department to show greater deference to State wildlife agency decisions on critical range for wildlife species, to strengthen cooperation on noxious weeds, and to use its authority to reduce the spread of noxious weeds by requiring certified weed free forage and by spending more rangeland improvement funds on weed control.

The Department believes that the provision as proposed adequately addresses its legal responsibilities and its desire to cooperate with State, county and Federal agencies, and has adopted it with no changes.

This section requires cooperation in management. It does not deal with the Department's responsibilities to consult with permittees or lessees or other private parties. The section derives in part from the statutory provision in section 315h of TGA, which requires the Secretary to provide, by suitable rules, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. While other authorities would allow the Secretary to expand the reach of this provision, under TGA the Secretary could not limit it to those with

an ''affected interest.'' That terminology relates to different statutory provisions, and is not germane here.

Additionally, FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent consistent with Federal law and the purpose of the Act.

The Department will ensure public involvement and cooperation, including State wildlife agency input, in the management of the public lands to the maximum extent possible. However, it is not appropriate to single out wildlife agencies for greater deference in these regulations. On a case-by-case basis, such deference may be appropriate.

The specifics of noxious weed programs are not germane to this section. It is the intent of this rangeland management effort to improve the Department's ability to address such issues, including through increased cooperation with State agencies responsible for weed control.

Subpart 4130—Authorizing Grazing Use

Many sections of subpart 4130 have been redesignated from the existing CFR section identifiers. These changes are intended to put the various sections into more logical groupings. The following table shows the relationship between section numbers in the existing rules and section numbers in the rule adopted today:

Old CFR section	Final rule section
4130.1	4130.1–1
4130.1–1	4130.4
4130.1–2	4130.1–2
4130.2	4130.2
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130.3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

In addition to changes in many section numbers, the headings of several of the sections have been revised to provide more descriptive titles. The following discussion will use the new numbers and cross reference the old numbers.

Section 4130.1 Applications

A new title, Applications, is added at § 4130.1, to improve the logical structure for the subpart.

Section 4130.1–1 Filing Applications (Formerly Section 4130.1)

In the proposal, there would have been two minor changes in this section from the existing rule. ''Conservation use'' would have been substituted for ''nonuse'' in the parenthetical phrase to clarify that such use must be specified in the application. Another new phrase would have specified that applications for annual grazing authorizations, which in the proposal included active grazing use and temporary nonuse, also had to be filed with BLM.

The Department received very few comments on this section. The few comments that the Department did receive concerned the concept of ''conservation use.'' This term is discussed at § 4130.2.

Upon further consideration, the Department believes that substituting ''conservation use'' for ''nonuse'' may be confusing, because conservation use is actually a subcategory of active use. Furthermore, the meaning of the other phrase proposed to be added to this section can be covered by existing language. Accordingly, the Department has decided not to finalize the proposed changes to this section. However, to improve the structure and logic of the subpart, and to clarify the purpose of this section, it is retitled, ''Filing Applications.''

Section 4130.1–2 Conflicting Applications (Section Number Remains the Same)

The proposed rule would have amended paragraph (b) of this section to expand the criteria used in evaluating conflicting applications to include the applicant's ability to provide for proper use of rangeland resources. When two or more otherwise qualified applicants apply for the same permit or lease, such considerations are legitimate methods of determining which applicant should be selected.

The new criteria would have promoted BLM's ability to award permits to good stewards of public lands in cases where there were competing applicants by taking into account the applicant's ability to manage the land. The criteria included the applicant's history of compliance with the terms and conditions of Federal and State grazing permits and leases.

The few comments that the Department received on this section addressed primarily the expansion of the criteria to include the applicant's history of compliance. Others inquired about additional definitions.

The Department declines to accept the commenters' suggestions to define additional terms because they are defined by common usage in rangeland management or law.

Although TGA does not specifically deal with competing applications, the Department does not believe that Congress, in passing TGA, intended the Department to issue grazing permits to documented violators of statutory provisions related to grazing use. Additionally, improvement of the rangeland under a specific permittee or lessee's livestock management is a valid factor to be considered, when evaluating conflicting applications. Furthermore, this review should extend to all persons who control a permit or lease, not just the specific applicant.

In accordance with the above discussion, the Department has decided to adopt this section as proposed.

Section 4130.2 Grazing Permits or Leases (Section Number Remains the Same)

Under the proposed rule, permits and leases would have continued to be offered for 10-year terms except in specified circumstances. The proposed rule would have clarified that all grazing permits and leases issued, including the transfer or renewal of permits and leases, would have included terms and conditions addressing the national requirements and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other terms and conditions that would assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands.

The proposal also would have clarified the requirements for consultation with interested parties prior to the issuance or renewal of grazing permits and leases. The proposal also would have clarified that the provision prohibiting the offer or grant of permits and leases when the applicant refuses to accept the terms and conditions of the offered permit or lease would have applied to applicants for renewals and new permits and leases.

The proposed rule also would have clarified the granting of conservation use and temporary nonuse. Conservation use would have been established as one of the allowable uses a permittee or lessee may be granted, when in conformance with applicable

land use plans, activity plans and standards and guidelines. Finally, the proposed rule would have provided that forage made available as a result of temporary nonuse may be authorized for temporary use by another operator, although forage used for conservation purposes would not be available to other livestock operators.

The Department received numerous comments on this section. Major themes expressed in the comments were objections to conservation use, concern that expanded public involvement would negatively affect applicants for permits and leases, and opposition to what was perceived as provisions to limit permit and lease tenure.

Many commenters expressed objections to the proposal for conservation use, asserting that conservation use would hurt rangelands and should only be allowed where scientific data demonstrates that rest from grazing will benefit the land. Many held the perception that conservation use would be required by the authorized officer. Others thought the proposal would remove the requirement for base property, would jeopardize water rights, would result in inadequate maintenance of range improvements, would reduce tax revenues, should require payment of grazing fees for conservation use, would lead to reduced fees available for rangeland improvements, would adversely affect operators on isolated or scattered public lands, and would result in purchase of permits for conservation purposes. Others asserted that conservation use was a closing of the range that would require following certain notice and comment requirements of FLPMA, while still others thought conservation use should be offered for a term of greater than 10 years. Some commenters thought that allotments that are not being grazed should be retired or reallocated rather than placed in conservation use. Finally, some comments were concerned that conservation use would be severely limited by existing land use plans because the concept is new and has not been considered in past planning efforts.

Considerable concern was expressed about the addition of public involvement prior to the issuance or renewal of grazing permits and leases. Some commenters opposed the expansion of public input opportunities on the grounds that such opportunities are not part of making decisions in other resource programs and that grazing decisions would be unduly delayed to the detriment of the permittee and lessee. Others suggested that the requirement to consult should be changed to ''consultation, coordination, and cooperation.'' Some commenters believed that public input should only be made part of NEPA analysis and planning efforts affecting grazing. Others stated that authorized officers should be able to issue or renew permits to permittees who demonstrate good stewardship without input from the public.

Some commenters held the perception that the proposed rule would significantly affect the term of permits and were concerned that decisions to issue permits and leases for terms of less than 10 years could be subjective and unfair. Others asserted that terms of less than 10 years would be contrary to FLPMA while still others suggested that only five-year permits and leases should be offered to poor stewards. Still others suggested that permits should be made available for competitive bid at the end of the 10-year term.

A number of respondents suggested provisions pertaining to temporary nonuse should be more flexible, that decisions to not make livestock use should be left to the ranchers, and that leaving forage placed in nonuse available to other applicants would discourage good stewards from resting areas (i.e., others would reap the benefits of the range the permittee protected).

Some concern was expressed about the provisions allowing the authorized officer to deny permits and leases to applicants who refuse to accept terms and conditions. Some commenters believed this provision would result in ''arbitrary'' terms and conditions. Some commenters suggested a one year continuance of a permit where a permittee or lessee seeking renewal refuses to accept proposed terms and conditions in order to provide time to reach agreement.

Some reviewers suggested a review to determine ''suitability'' of the range to support livestock grazing should be required prior to permit or lease issuance and offered criteria to be followed. Some commenters asserted that issuance of 10-year permits requires NEPA compliance and should be subject to administrative appeal, and that annual authorizations to be made in the absence of approved activity plans should be subject to administrative appeal.

Many comments received in this section that pertained to the definition of ''temporary nonuse'' are addressed at § 4100.0–5.

The Department disagrees with assertions that conservation use will be detrimental to the health of the land. Existing data should generally be adequate to make conservation use decisions. Conservation use will only be approved when it is found to be in conformance with land use plans and when it is determined it will promote resource protection or enhancement. This determination may require additional data in a few cases but the Department anticipates that available data and input from the permittee or lessee and others will usually prove sufficient. In addition, allotments placed in conservation use will be monitored in a fashion similar to other allotments to determine whether such use is consistent with standards and guidelines, and established resource management objectives. These requirements, as well as the 10-year limit on permits specifying conservation use, will discourage persons from obtaining permits for the sole purpose of placing them in conservation use.

Conservation use is requested by the permittee and approved by the authorized officer based on the provisions in the applicable land use plan. The BLM will not impose conservation use on an unwilling permittee. Conservation use must be included as part of an application by a permittee or lessee and must be found to be consistent with the land use plan. Appropriate terms and conditions will be attached to permits that specify conservation use, and permittees will be subject to all applicable requirements under the grazing program rules. This includes the requirement for base property. *See* discussion of § 4110.2–1.

Whether placing all or portions of allotments in conservation use will affect water rights will depend on the applicable State laws. However, resting grazing land is a commonly accepted grazing practice. Permit and lease holders possessing rights to water, as well as BLM, will need to consider potential effects on water rights in deciding to apply for or approve conservation use.

With regard to maintenance and operation of range improvements where the forage has been devoted to conservation use, the Department intends that in most, if not all, cases, permittees will be required to maintain improvements during the term of the conservation use. Requirements for maintaining range improvements will be made a condition of any permit specifying conservation use. Occasionally, where an existing improvement enhances neither the goals of conservation use nor the goals of grazing use or any other multiple use, maintenance may not be required. Depending upon the circumstances, specific activities to improve range

conditions might also be incorporated in the terms or conditions of a permit.

Significant reductions in tax revenues or available range improvement funds are not expected to result from conservation use. While grazing fees will not be collected for conservation use, since no forage is being consumed, the Department considers that the benefits to be derived by the conservation use will offset the relatively minimal decrease in grazing receipts. The FEIS analyzes the economic effects of the various management alternatives considered in arriving at this final rule.

Concerning the perceived problems associated with scattered intermingled public lands, conservation use is at the option of the permittee or lessee subject to approval of BLM. If intermingled lands create a problem for the permittees or lessees, they may decide not to apply for conservation use.

The Department disagrees that conservation use constitutes a ''closing of the range'' that is subject to notice and comment requirements of FLPMA. Presumably the commenter was referring to requirements involved when a major use is eliminated from very large tracts of public land (43 U.S.C. 1712); however, this statutory provision does not pertain to conservation use which does not constitute an exclusion of a major use. Conservation use is a grazing management practice and does not constitute a permanent retirement of a grazing allotments. Decisions to retire grazing allotments are considered through BLM's land use planning process.

The 10-year limitation on conservation use is consistent with the statutory requirements for permit limitations. As adopted today, conservation use could be approved for up to 10 years. FLPMA (43 U.S.C. 1752(a)) requires that grazing permits or leases be issued for a term of 10 years or, in circumstances specified at 43 U.S.C. 1752(b), less. This limit also recognizes that conservation oriented objectives may be met or revised and the forage may then be re-allocated for use by livestock. This also is the rationale for why the grazing privilege is not cancelled or ''retired'' or why the area is not closed to livestock grazing.

To clarify how a permittee can change back to active use, the final rule is modified from the proposal to include conservation use in § 4130.4(b), ''Approval of changes in grazing use within the terms and conditions of permits.''

In regards to the comment that the ability to authorize conservation use will be severely limited because current land use plans don't consider conservation use specifically, it is not a requirement that conservation use be explicitly addressed in plans. Rather, it must be found to conform with the land use plan. The Department believes that conservation use will conform with land use plans in most cases.

For responses to general comments concerning public involvement please see §§ 1784.0–5 and 4100.0–5. Analysis of permit or lease issuance currently requires NEPA compliance which in turn provides for broad public input. In addition, issuance or denial of an application constitutes a decision of the authorized officer and, as such, is protestable and appealable under subpart 4160. Careful consideration of public input early in the process for issuing or renewing permits should minimize the time spent in resolving protests and appeals. In response to comments, consultation, coordination, and cooperation is inserted in the language adopted today.

Concerning the comments that expressed concerns over permit tenure, the proposed rule and the rule being adopted today vary little from the existing rule. The principal change pertaining to permit tenure that was proposed was establishing permit and lease terms to coincide with the terms of any base property leases. The authority for this and other tenure provisions is clearly established by FLPMA (43 U.S.C. 1752(b)) which states permits and leases may be issued for terms less than 10 years when determined to be ''* * * in the best interest of sound land management.'' Decisions to approve or deny a permit or lease application are appealable under subpart 4160. The Department does not agree with the suggestions to end preference for renewal in favor of competitive bidding. Given the intermingled patterns of some public lands, statutory provisions pertaining to renewal of permits, and administrative obstacles, competitive bidding would not serve as a viable option in many instances. Competitive bidding for permits and leases was analyzed in the FEIS.

The rule as proposed and adopted today provides a great deal of flexibility to permit and lease holders in terms of temporary nonuse. Under this rule, applications for temporary nonuse will generally be approved. Where the limitations placed on temporary nonuse (maximum of three years and open to other applicants) prevent the permittee or lessee from meeting their needs, the option of applying for conservation use remains.

The provision that applicants who refuse to accept the terms and conditions of the offered permit or lease will be denied will not result in arbitrary terms and conditions. The general requirements of the previous rule for determining appropriate terms and conditions have been retained in this rule. Also, should the applicant believe terms and conditions are not appropriate, the applicant may appeal the decision of the authorized officer under subpart 4160. If, after communication with the involved parties, the decision to deny or approve an application is appealed, the authorized officer would have the option to issue a temporary nonrenewable permit pending resolution of the appeal.

The Department has chosen not to incorporate suggestions pertaining to suitability determinations prior to permit or lease issuance. FLPMA sets forth specific factors BLM must consider in connection with land use planning and use authorizations. A rigid suitability review is not specifically required by FLPMA. Moreover, the process associated with land use planning and decisions on use authorizations, including NEPA compliance and application of standards and guidelines, adequately address concepts of suitability. The fundamentals of rangeland health, guiding principles for State or regional standards and guidelines, and the fallback standards and guidelines, presented in subpart 4180 of this final rule, will focus on attaining and maintaining healthy rangelands.

The use of suitability determinations was considered in the FEIS under the alternative titled Environmental Enhancement. Readers are encouraged to review the discussion of suitability in that document.

This rule will not change existing NEPA implementation procedures. As stated above, decisions under this section are appealable under subpart 4160. Appealable decisions include the issuance or denial of permits and leases and modification of terms and conditions. As explained at § 4130.4, annual ''authorizations'' are merely validations that the requested use falls within the terms and conditions of the permit or lease. Normally, they do not require further NEPA analysis or public input. However, issuance of a grazing permit or lease, even a one-year or nonrenewable permit or lease, does not all under the provisions of the new § 4130.4, and would therefore be subject of NEPA analysis, consultation requirements, and the right of protest and appeal.

In accordance with the above discussion, the Department has decided to adopt this section as proposed except for replacing ''consultation'' with ''consultation, cooperation and coordination'' in reference to obtaining public input, replacing proposed language pertaining to issuance of permits and leases for a period of less than 10 years with wording taken directly from FLPMA (43 U.S.C. 1752), and adding to the requirement that temporary nonuse and conservation use be in conformance with plans, standards, and guidelines a requirement for conformance with the fundamentals of rangeland health presented in § 4180.1.

Section 4130.3 Terms and Conditions (Formerly, Section 4130.6)

This section would have required that permits and leases incorporate terms and conditions that ensure conformance with the national requirements and established standards and guidelines. This requirement would have established that terms and conditions of permits and leases are the principal vehicle for implementing the standards and guidelines and thereby the precepts of ecosystem management.

A few commenters stated that the national requirements and established standards and guidelines and are not linked to livestock grazing, are unattainable due to their lack of site-specific analysis and contradict Congressional intent.

Other commenters asserted that maintenance of national standards and guidelines should be made a condition of the permit and that livestock operators should have to get approval from the authorized officer before making use of any resource beyond their permitted forage such as water, wildlife, etc. and that permits should include a schedule for monitoring.

The fundamental requirements, guiding principles and fallback standards are all linked directly to livestock grazing. Developing standards and guidelines at the local level, with heavy reliance on public involvement through the RACs, will assure that they are attainable and consistent with local conditions. The fundamental requirements and guiding principles are based upon ecological principles. The Department believes this is consistent with the intent of Congress which has mandated the Secretary in FLPMA to protect the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resources, and archaeological values and to assure the proper use of the public land resources to assure sustainability.

The standards and guidelines will be made part of the terms and conditions of the permit in accordance with § 4130.3. Levels of permitted use are subject to adjustment, depending in part on resource condition concerns, in accordance with § 4110.3–2. Livestock operators are required to get approval from the authorized officer before making use of any resource beyond the uses of public resources directly associated with livestock grazing, as provided in their permit or lease. Monitoring schedules may become part of the terms and conditions of some permits and leases, especially where activity plans have been completed for the allotment.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4130.3–1 Mandatory Terms and Conditions (Formerly, Section 4130.6–1)

This section would have been amended to remove reference to acceptable methods for determining carrying capacity and to remove the cross references for those sections of the rule that detail how stocking levels are adjusted. This change was made to recognize the use of methods other than monitoring in determining carrying capacity and to streamline the wording of the mandatory terms and conditions by removing unnecessary cross references. Other provisions in the proposal, such as § 4110.3, would have broadened the sources of information that could be relied upon by BLM as a basis for making decisions about permitted use, carrying capacity, and other factors. The section would have been further amended by adding a paragraph (c) that would have required that standards and guidelines be reflected in the terms and conditions of permits and leases. This provision would have ensured that individual permits or leases contribute to the maintenance or enhancement of healthy rangelands and is the principal mechanism for implementing standards and guidelines.

Many commenters asserted that monitoring should be retained as a requirement for determining carrying capacity and that the Department should add a requirement that the level of use should only be part of the terms and conditions if accepted uncontested by the affected permittee or lessee. Commenters also asserted that conformance with the national requirements, standards, and guidelines would be impossible. Other commenters stated that if the agency cannot afford to protect the public lands used for grazing through monitoring, then grazing should not be allowed.

Use of other sources of information besides monitoring are discussed above, principally at § 4110.3 and also at § 4110.3–2. Carrying capacity for the allotment is set by the permit or lease. Changes in permitted use, including the requirement that they be supported by monitoring, field observations, ecological site inventory or other data is addressed at § 4110.3. The methods to be used are more appropriately dealt with under subpart 4110 rather than being included as a parenthetical statement in § 4130.3–1.

The fallback standards and guidelines are reasonable and achievable. Field testing during development of this proposal showed significant conformance between fallback standards and guidelines and existing land use plans. Regional standards and guidelines will be developed with full public participation (including grazing permittees and lessees) and in consultation with the RAC. This level of public involvement will help ensure that the regional standards and guidelines developed will be realistic and achievable. Issues relating to the standards and guidelines are discussed more fully at subpart 4180.

Reference to ''monitoring'' was eliminated from this section not because the Department does not intend to monitor range conditions, but because other sources of information are legitimate means for BLM to evaluate range conditions and because this section does not establish the practices to be followed in estimating carrying capacity (*See* §§ 4110.3–1 and 4110.3–2).

In accordance with the above discussion the Department has decided to adopt the provision as proposed, with one change. The words ''the national requirements, standards, and guidelines pursuant to'' have not been included in the final rule. Actual achievement of national requirements, (which have been modified from the proposed rule and are now reflected in fundamentals of rangeland health), standards, and guidelines may not be immediately possible but rather may depend on a series of actions taken over a period of time.

Section 4130.3–2 Other Terms and Conditions (Formerly, Section 4130.6–2)

Paragraph (f) of this section would have been amended to allow terms and conditions to provide for temporary changes in livestock use for the improvement of riparian area functions and for protecting other rangeland resources and values consistent with

applicable land use plans. The amendments would have been consistent with the themes of protection, improvement, and restoration of the rangelands to increase overall productivity, and would have enhanced multiple-use management as required by applicable laws. Furthermore, the amendments would have allowed responsive action in preventing damage that could result from grazing during nontypical natural conditions (such as delaying spring turnout during extreme drought).

Additionally, the section would have been amended by the addition of a new paragraph, (h), allowing terms and conditions to specify that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands for purposes of administering the public lands. This provision would have addressed attempts to prevent BLM from performing functions such as range use supervision, compliance checks, and trespass abatement that are needed to administer the Federal grazing permit or lease.

This section attracted a number of comments. Many of the comments expressed concern over the proposed language of paragraph (h). Comments ranged from opposition to paragraph (h) on the grounds that a requirement for administrative access was an ''unwarranted intrusion'' to asserting that such a condition on a permit would constitute a ''taking.''

Other commenters recognized a need for BLM to conduct administrative functions on the public land. They stated that the rule needs to make it clear this provision can only be used by BLM personnel to conduct ''BLM business on the Federal lands.'' Commenters also expressed concerns that paragraph (f) would allow for ''permit cancellation'' without notifying or consulting the permittee. Other commenters viewed the riparian improvement provisions of paragraph (f) as vague.

The provisions of paragraph (h) regarding administrative access refer to access across private lands to reach public lands in order for agency staff to perform necessary resource management activities on the public lands. These include such activities as monitoring of resource conditions, range use supervision, and evaluating the conditions of or the need for range improvements. Land management agencies, like any landowner, need appropriate access to the lands they administer. Efficient access to allotments is needed and is consistent with the partnership between permittees or lessees and the agency to manage rangelands properly. In cases where BLM is unable to obtain permission to cross private lands to perform necessary administrative functions on public lands, BLM may not be able to allow grazing or other use.

A discussion regarding ''takings'' can be found above in the General Comments section of this preamble.

This provision does not pertain to public access across private lands. The need for public access is typically considered through the land use planning process. Efforts are made through agreement and acquisition of easements to acquire access where appropriate.

Paragraph (f) of the proposed rule was intended only to provide for temporary delays, cessation, or modification of livestock grazing, not permanent actions. The word ''temporary'' is moved in the final rule adopted today to make clear that paragraph (f) does not provide for permanent changes in livestock use. In all cases the permittee or lessee will be given reasonable notice, subject to the limitations that result from unforeseen natural factors such as drought or flood.

The Department disagrees with the commenters' assertions that provisions of paragraph (f) pertaining to riparian areas are vague. The importance of riparian areas in the stabilization of soils, maintenance of water quality, reduction of flood hazard and provision of habitat have been well established. Although the standards for proper functioning conditions for specific riparian sites are not provided in this rule, the basic factors of healthy riparian areas are presented in subpart 4180 and will be addressed in the development of State or regional standards and guidelines. The development of these standards and guidelines will involve public input and consultation with the RAC, which will help ensure that they are reasonable and implementable.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

Section 4130.3–3 Modification of Permits or Leases (Formerly, Section 4130.6–3)

The proposed rule would have amended this section to provide for consultation with States and the interested public concerning modification of permits or leases. It would also have added lack of conformance with the national requirements or the standards and guidelines as a reason to modify terms and conditions of a permit or lease. Finally, it would have broadened opportunities for input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to change grazing use or terms and conditions. These changes were intended to enhance opportunities for input by permittees, lessees, States, and the interested public in decisions regarding the management of the public rangelands.

The Department received a few comments on this section. Commenters objected to the deletion of the terms ''cooperation and consideration;'' to use of land use plan objectives as a test of whether grazing is being properly managed; and to the involvement of nongrazing interests in making forage allocation decisions. Some were concerned that the authorized officer would use land use plan objectives as a reason to reduce grazing use without evidence that a problem was caused by such use. Others supported an annual public review of allotments to determine whether they are in compliance with the land use plan.

The rule as adopted today includes the terms ''cooperation and coordination.'' This decision is discussed at § 4100.0–5. Conformance with land use plan objectives is a reasonable test of whether livestock grazing is being properly managed. Land use plan objectives form the basis for all management decisions within the area covered by the plan. Should actions taken on a given allotment not lead to achieving those objectives it is incumbent upon the authorized officer to take appropriate action to assure that they do. In the final rule adopted today, language is added to clarify that this section relates to the ''active use or related management practices.'' This specifies that the authorized officer can modify terms and conditions of a permit or lease when the grazing use is the cause of a failure to meet land use plan objectives. Additionally, decisions to increase or decrease the grazing use or to change the terms and conditions of a permit or lease must be based upon monitoring and other data.

The final rule requires the authorized officer to provide the public with the opportunity for review and comment and to give input during the preparation of reports that evaluate monitoring. The Department believes that providing the maximum opportunity for public input assures that all factors are adequately considered by the authorized officer when he/she is making allocation decisions.

The Department does not agree that the rule should require an annual evaluation of all allotments to determine

if they are in conformance with the land use plan, AMP, or other activity plan. Frequency of monitoring and evaluation should be dictated by local conditions rather than by general rule.

In accordance with the above discussion, the Department has decided to adopt the provisions, with some changes. The only substantive change is the addition of the phrase ''active use or related management practices'' as clarification that the basis for modifying terms and conditions of permits or leases when management objectives are not being met is use related to grazing. The title of the final section is changed to ''Modification of Permits or Leases'' to further clarify the intent of the section.

Section 4130.4 Authorizations within the Terms and Conditions of Permits and Leases (Formerly, Section 4130.1–1 Changes in Grazing Use).

In the proposed rule, this section would have provided for field managers to make temporary changes in authorized use, either increases or decreases, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would have provided latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration.

The Department received a few comments on this section. Most commenters were concerned about the 25 percent or 100 AUMs limit on increases or decreases in grazing use. Some stated the limits were unreasonable, especially in respect to ephemeral ranges. They stated that in some areas occasional very wet years might produce great amounts of forage, so that use could reasonably be increased by much more than the 25 percent limitation. A few cited potential impacts of the provision such as foregone employment associated with higher use levels and increased fire hazard if forage is not harvested. Some commenters suggested changes in use should only be limited by the terms and conditions of the permit or lease.

Some commenters opposed the provision that the authorized officer could impose such a change without the permittee's consent. A few held concerns that the consultation provisions would be burdensome, while others thought consultation should be expanded to ''consultation, coordination and cooperation.''

Some commenters were confused by this section and asked what would happen if changes greater than 25 percent were needed and how the provision affected temporary nonuse and permitted use.

Some reviewers had concerns with how ephemeral grazing would be affected by the provision and expressed the opinion that grazing should not be permitted in the hot desert biome. It was suggested that this provision exclude areas receiving less than 10 inches of rainfall annually.

Based largely on the comments on this section, the Department has retitled the section and removed references to limitations of 25 percent or 100 AUMs and the authorized officer requiring increases or decreases in use. The changes made in this final rule are intended to clarify how proposed changes in grazing use in any given year may be approved when the changes requested by the permittee or lessee are consistent with the terms and conditions of the permit or lease.

Changes in use under this provision would constitute the authorized officer's ministerial validation that the specific kind and numbers of livestock, the dates of use, and other conditions of use requested by the permittee or lessee fall within the terms and conditions of the permit. This process ensures that use is consistent with resource management objectives and that operators and BLM have documented how use will be made for the upcoming grazing year for purposes of maintaining use data and supervising use. (Application for grazing use outside of the terms and conditions of the permit or lease would be considered under other provisions of this final rule. (*See*, for instance, §§ 4110.3–2, 4110.3–3, and 4130.3–3.) Consultation is not required under this section because (a) the request under consideration will come from the permittee or lessee, and (b) in the future consultation will have taken place at the time the permit or lease was issued (*see* § 4130.2) and at any time the terms and conditions of the permit or lease are modified (*see* § 4130.3–3).

This provision for validation of requested grazing use when such use falls within the terms and conditions of the permit or lease does not apply to the issuance of permits or leases. Issuance of permits or leases, including short-term permits or leases, constitute direct Federal actions that are subject to NEPA analysis as well as the provisions of § 4130.2 of this final rule.

Examples of the types of changes that would be considered under this section are the activation of previously approved temporary nonuse or conservation use, placing permitted use in temporary nonuse or conservation use, changes in dates and class, and the use of forage temporarily available on ephemeral or annual ranges. On other than established ephemeral range, use of forage in amounts greater than permitted use that has temporarily been made possible by factors such as above-normal precipitation would require the issuance of a separate nonrenewable permit under § 4130.6–2 of this final rule.

Decisions pertaining to permitting ephemeral grazing use and the establishment of terms and conditions of use are not governed by this section of the rules. These types of decisions typically require NEPA compliance and public involvement. The concerns of commenters about authorizing ephemeral grazing use are best addressed in the planning and NEPA analysis processes.

In accordance with the discussion above, the rule adopted today will provide that the authorized officer may approve requested changes in grazing use when the changes fall within the terms and conditions established in the grazing permit or lease.

Section 4130.5 Free-Use Permits (Formerly, Section 4130.3)

This section was originally proposed as part of § 4130.7–1, however it is moved to the newly redesignated § 4130.5 to consolidate provisions concerning free-use permits. This section would have provided for free-use under three specified circumstances.

The Department received a few comments on this provision. Commenters stated that free use should be allowed only for scientific research projects. Commenters also stated it should not be authorized to control noxious weeds, since overgrazing facilitated the spread of noxious weeds in the first place.

The Department foresees that this provision will be used only when it is a desirable means of accomplishing a particular task. It will also give on-the-ground managers an additional tool to meet resource objectives. For example, there are some circumstances where carefully managed grazing can be used to control noxious weeds. Often, management prescriptions can be developed within existing permits and leases. However, there are some occasions where a free-use permit could be a valuable alternative.

In accordance with the above discussion, the Department has decided

to adopt the final rule language as proposed with the exception of its relocation from the proposed §§ 4130.7–1 to 4130.5 of the final rule.

Section 4130.6–1 Exchange-of-Use Grazing Agreements (Formerly, Section 4130.4–1)

This proposed section would have included requirements that agreements for exchange of use must be in harmony with management objectives, and compatible with existing livestock operations. The agreements would have been required to address the fair sharing of maintenance and operation of range improvements and would have been approved for the same term as any leased lands that are offered.

The Department received comments expressing a desire that all non-Federal lands which are unfenced and intermingled with public land be covered by an exchange-of-use agreement and that lands must be located within the permittee's area of use and not in another permittee's area of use in order for the carrying capacity of the non-Federal lands to be credited to the permittee without charge. Other commenters objected to unnecessary requirements or restrictions on agreements and possible impacts to private and state trust lands.

The Department disagrees that all non-Federal lands should be covered by an exchange-of-use-agreement. It is necessary for the authorized officer to have the flexibility to deal with local situations and use exchange of use where appropriate. The Department agrees that the lands involved in an exchange-of-use-agreement should be within the allotment. This is current BLM practice and will not be altered by this rule.

The Department disagrees that the only restriction should be that such agreements not exceed grazing capacity. Grazing capacity is a critical factor to achieving management objectives; however, it is not in the Department's interest to enter into agreements which are not in harmony with management objectives and compatible with existing grazing operations.

Exchange of use agreements are initiated at the permittee's request. Lands voluntarily included in an exchange of use agreement would be subjected to the terms and conditions of the permit or license.

The requirement that an exchange of use agreement contain provisions for the equitable sharing of operation and maintenance of range improvements will not result in the maintenance of improvements that are of no value. The necessity of range improvements to achieve allotment objectives as well as maintenance requirements are addressed in allotment plans and permit terms and conditions and are not affected by an exchange of use agreement.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of a modification to clarify that the lands subject to the exchange-of-use agreement must be within the applicant's BLM grazing allotment.

Section 4130.6–3 Crossing Permits (Formerly Section 4130.4–3)

The proposed provisions would have clarified that crossing permits are a form of temporary use authorization for grazing, and that the terms and conditions must be contained in the temporary use authorization.

The Department received very few comments on this section. Commenters suggested that the proposed changes would slow down the approval process and create legal risks.

The Department has adopted the provision as proposed. The provisions adopted today are consistent with current practice in the field. These procedures have not resulted in unusual delay or legal risk.

Section 4130.7 Ownership and Identification of Livestock (Formerly, Section 4130.5)

This section would have been amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

The proposed rule would also have added an exemption from some of the requirements for ownership of livestock for sons and daughters of permittees or lessees in specified circumstances.

The Department received a few comments on the section. Many commenters wanted grandchildren and other family members or private business partnerships to be covered by the exemption and for the restrictions to be modified or removed.

The Department believes that excluding sons and daughters from the requirements of this section is a reasonable compromise which will address the vast majority of cases and has chosen not to extend the exclusion to other family members or private business partnerships.

The Department believes it is necessary to have all four conditions of approval for granting the exclusion. The Department believes that if livestock owned by sons and daughters exceeds 50% of the total number authorized then consideration should be given to issuing the permit in the name of the person owning the majority of the livestock.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications to clarify the language that was originally proposed.

Section 4130.8–1 Payment of Fees (Formerly Section 4130.7–1)

The fee portion of the proposed rule generated numerous diverse and conflicting public comments. As noted in the August 1993 advance notice of proposed rulemaking, there are a number of alternative base values and alternative fee formulas that could be used to set fees for grazing public lands. There have been numerous studies and much public debate concerning what is a reasonable, fair, and equitable fee for grazing Federal rangelands.

The draft EIS for Rangeland Reform '94, published in May 1994, analyzed seven fee alternatives: PRIA or No Action, *i.e.*, the current fee; Modified PRIA; BLM-Forest Service Proposal; Regional Fees; Federal Forage Fee Formula; PRIA with Surcharges; and, Competitive Bidding. Each was analyzed in conjunction with management alternatives.

The preamble to the proposed rule published in the March 25, 1994 **Federal Register** described the pros and cons of adopting an increased grazing fee. The formula set forth in the proposed rule would have addressed the disparity between rates charged for livestock forage on private and State lands versus the rate charged for Federal lands.

The preamble acknowledged that some permittees and lessees that are highly dependent on Federal forage, do not have off-ranch income, and have heavy debt loads, might be required to make financial adjustments. These adjustments, in some circumstances, might have included sale of the ranch. However, it was expected that such sales would occur in only limited circumstances. It was further noted that such sales occur now and could be

expected to continue even if the fee proposal were not adopted. However, the preamble noted that the economic impact on western communities was expected to be localized and, in most areas, not significant because the portion of the local economy dependent upon the use of Federal forage is relatively minor.

The rule proposed March 25, 1994, discussed the criteria identified by BLM and the Forest Service by which a new fee proposal should be measured:

1. The fee charged for livestock grazing should approximate market value. Using market value helps assure that the public receives a fair return for use of publicly owned resources.

2. The fee should not cause unreasonable impacts on communities that are not economically diverse or to livestock operations that are greatly dependent on public land forage.

3. The grazing fee should recover a reasonable amount of government costs involved in administering grazing permits and leases and should provide increased funds to improve ecological conditions.

4. The fee system should be understandable and reasonably easy to administer.

Public comments on the proposal regarding payment of fees addressed how the fee formula should be derived, impacts of an increase, differences between Federal and private lands rates, non-fee costs associated with Federal lands, fair market value for public land grazing, fair return to the public for livestock grazing use on public lands, recovery of costs for BLM's range program, whether the fee represents a subsidy for public lands ranchers, and funds for range improvements.

Commenters recommending no change to the existing fee formula anticipated that an increase in fees would have adverse effects on individual operations and rural western counties. Some commenters suggested that other factors be considered in setting fees, including regional economic differences and resource conditions.

The final rule will not include the fee provision, thus giving the Congress the opportunity to address appropriate fees for grazing on public lands. In the FY94 Interior Appropriations bill, the Senate voted for a moratorium on the completion of the rangeland reform regulations. Although the House later approved grazing reform by a vote of 314 to 109, the Senate did not approve the measure.

Subsequently, the Department resumed this rulemaking. Five Congressional hearings were held in the field and in Washington following release of the proposed rule. Correspondence from Members of Congress through the process has suggested the need for Congressional involvement and possible action. A few Members of Congress commented that some increase in grazing fees is needed while others indicated that the proposed fee would have a heavy negative impact on public lands ranching. Some Congressional commenters suggested alternative methods of setting fees and leasing land.

Some commenters opposed the proposed fee formula asserting that it would promote poor resource use and would not reflect a fair return for the public. Some public comments suggested a link between the fee formula and overgrazing. Analysis of the relationship between livestock grazing use on BLM lands and the fee indicates that there is little correlation between the two at the current fee level and the fee levels considered by the proposed rule. First, the amount of livestock grazing allowed on Federal lands is set by BLM and is independent of the fee. Second, even within the allowed limits, there is no indication that the proposed fee would have reduced livestock grazing on Federal lands. From 1982 to 1983, while the fee decreased by 25 percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985, 1986 and 1987, livestock use decreased by nearly seven percent from 1985 to 1986 and increased about seven percent from 1986 to 1987. Moreover, from 1992 to 1993 when the fee decreased, livestock grazing use decreased also, instead of increasing. Therefore, it appears that even within the allowable limits of livestock grazing use, the fee level does not have a dominant effect on livestock use. Apparently other factors such as livestock prices, livestock inventories, cost of production, drought, availability of other forage and market conditions play a substantial role in determining livestock grazing use.

Based on the above statistics, it appears that as long as the Federal forage is not priced above market value the forage will continue to be used, if not by the current permittee, then by a new permittee. The grazing fee analyzed in the preferred alternative was not above the market value for Federal forage. Therefore, it would not have significantly affected the amount or type of grazing use or, in turn, rangeland health.

Other factors, such as proper planning and grazing management based on sound technical and scientific data and professional skills, conformance of terms and conditions with effective management practices such as those embodied in the fundamentals of rangeland health and the standards and guidelines of subpart 4180 of this final rule and timely and appropriate responses to conditions of resource deterioration that are essential to improving rangeland health. Based on the historical data cited above, management practices and market conditions have a greater impact on rangeland health than does the specific fee level.

The Department has concluded that, due to the great amount of comment received against the fee (either because it was being changed too much or too little), significant Congressional interest, and the severability of the fee and management portions of the proposed rule, it is appropriate to retain the current fee structure at this time. This will provide an opportunity for Congress to consider the need to legislate a fee increase.

Other proposals also are not adopted in the final rule. The surcharge associated with base property leases and multiple year billing provisions have not been adopted. As many commenters pointed out, authorized subleasing is a long-standing practice that provides benefits to both the rancher and the public. First, it helps facilitate the entry of new ranchers into the livestock business in Federal land areas. Second, unlike Forest Service lands, many BLM lands are intermingled with private lands, and therefore are affected by and affect the management of intermingled private land and improvements. The Department has decided that the proposed surcharge on the transfer of Federal permits and leases resulting from base property leases would have had negative effects that would have outweighed the benefits of the surcharge, and has not carried this form of surcharge forward into the final rule.

However, the final rule adopts the proposed provision that when the lease or permit is transferred to the base property lessee, it must be issued for a period of not less than three years. Such a lease of the base property constitutes a substantial long-term commitment of resources thus reducing the potential for large short-term windfall profits, as identified by the General Accounting Office (RCED–86–168BR) and the Office of the Inspector General (92–1–1364), and helping to ensure good stewardship. The authorized officer has the discretion to approve a transfer for a shorter period when consistent with management and resource condition objectives.

Other changes proposed in § 4130.7–1 also are adopted in this final rule. In the proposed rule, these changes would have amended § 4130.7–1 to make clear the definition of billing unit, to provide for assessing a surcharge in certain instances for the public landlord's share of authorized livestock pasturing agreements associated with Federal land grazing, to clarify that grazing use that occurs before a bill is paid is an unauthorized use and may be dealt with under the settlement and penalties sections of these rules, and that noncompliance with terms and conditions may result in the loss of after-the-grazing-season billing privileges. These provisions are adopted as proposed. The proposed provision to provide for free use where the primary objective of livestock use is to benefit resource conditions or management, such as scientific study or the control of noxious weeds, is moved to § 4130.5 in the final rule.

The Department received comments that were both supportive and critical of the proposed pasturing agreement surcharge. Commenters criticized the approach to calculating the surcharge because they believed it did not reflect the regional differences in forage value. Other commenters opposed absolutely any pasturing on BLM lands because, they maintained, it results in large windfall profits from sale of public resources. Still other commenters asserted that permittees are entitled to profit from pasturing other operators' cattle on their Federal grazing permits or leases.

The Department believes pasturing agreements have a potential for short-term windfall profits and do not provide an appropriate incentive for good stewardship. Therefore, the provision for a surcharge on pasturing agreements has been adopted in this final rule. However, the calculation of the surcharge is changed to reflect the regional differences in forage value using State private grazing land lease rates, as calculated by NASS. The consideration of the private grazing land lease rate for each State, rather than an average of all States, is intended to reflect the value of the Federal forage involved in a more equitable and efficient manner. After consideration of private land lease rates in the western states, the Department has decided that 35 percent of the difference between the private grazing land lease rate in each respective State and the Federal grazing fee represents a reasonable balance that will allow the permittee or lessee to cover costs that may arise from pasturing other livestock operators' cattle, will provide the government a reasonable rate of return, and will aid in ensuring good stewardship. Sons and daughters of permittees or lessees will be exempt from the surcharge, as set forth in the final rule.

A number of comments were also received on free use, which was originally proposed in this section. Most of the comments expressed concern that the provision would lead to numerous free use grazing permits. This provision is intended to provide for the use of grazing, at the discretion of BLM, for limited scientific and vegetation manipulation objectives. For example, intense grazing by goats may serve as an effective method for the control of weeds such as leafy spurge.

The Department has decided to adopt the provision with the changes discussed above.

Section 4130.8–3 Service Charge (Formerly Section 4130.7–3)

Section 4130.7–3 would have been amended by redesignating the section as section 4130.7–4, and by adding to applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

The Department received very few comments on this section. Accordingly, the Department has decided to adopt the final rule language as proposed with the exception of a minor clarifying change.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

As proposed, paragraph (a)(2) of this section would have been amended to clarify that approved temporary nonuse, conservation use, or temporarily suspended use would be excepted from the requirement to make substantial use, and, therefore would not have been subject to penalty action under § 4170.1. Other proposed amendments to this section would have clarified paragraph (b)(1) to establish that grazing bills for which payment has not been received do not constitute authorization to graze. Paragraph (b)(9) would have been amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to ''closed to range'' areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. To be consistent with the Forest Service this section would have restored two provisions that existed in this subpart prior to 1984. These provisions would have made subject to penalty permittee or lessee violations of the Wild and Free Roaming Horse and Burro Act of 1971 and violations of Federal or State laws or regulations concerning animal damage control, application or storage of pesticides, herbicides or other hazardous materials, illegal alteration or destruction of stream courses, pollution of water resources, illegal take, destruction or harassment of fish and wildlife resources, or illegal destruction or removal of archeological resources.

Further provisions would have been added to clarify that attempted payment by a check that is not honored by the bank does not constitute payment and would result in unauthorized use. (However, § 4140.1(c) specifically provides for civil penalties only where payment with insufficiently funded checks is repeated and willful.) The proposal also would have provided for reclamation of lands, property or resources when damaged by unauthorized use or actions.

The proposed rule also would have added reference to the types of violations of Federal and State laws and regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment that would be prohibited acts subject to penalty under subpart 4170 where public lands are involved or affected.

The Department received many comments on this section. A number of the comments revealed some confusion as to the interaction between § 4140.1, prohibited acts, and subpart 4170, the penalties section of the grazing rules. Section 4140.1 provides a list of prohibited acts. Specifically, § 4140.1(a) lists prohibited acts for which permittees and lessees might be subject to civil penalties; § 4140.1(b) lists prohibited acts for which all persons using the rangelands might be subject to civil and criminal penalties, and new § 4140.1(c), which incorporates what was proposed as § 4170.1–3, lists additional prohibited acts and establishes the conditions that must be fulfilled before the Department may impose civil penalties on those committing these prohibited acts. Sections 4170.1 and 4170.2 set forth the penalties, both civil and criminal, for committing prohibited acts.

Many commenters objected to including violations of State and Federal statutes related to water pollution, wildlife protection, and other matters, as prohibited acts. Some commenters asserted that this provision exceeded the Secretary's authority, and violated Section 302(c) of FLPMA (43 U.S.C. 1732(c)). In particular, these commenters contended that FLPMA provides only for the revocation or suspension of authorizations for the use,

occupancy, or development of public lands on the basis of violations of State or Federal acts or regulations applicable to air or water quality. Furthermore, these commenters asserted that Section 302(c) of FLPMA provides for the suspension, revocation, or cancellation of authorizations to use, occupy, or develop public lands only when violations of terms and conditions occur on public lands in connection with the exercise of rights and privileges of the use authorization. Others were concerned that penalties would be imposed for even *de minimus* violations.

Although Section 302(c) of FLPMA contains specific references to Federal and State air and water quality standards, its language is expansive. It allows enforcement of terms and conditions, ''including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands * * *.'' The Department has concluded that these provisions of FLPMA would encompass the activities prohibited in § 4140.1 of this rule. Moreover, the Department has concluded that good stewardship of the public lands, as well as the intent and specific language of FLPMA, are served by expanding the prohibited acts section to include violations of State and Federal laws related to natural resources, and that expanding the list of prohibited acts provides the regulated community and the public with improved notice of the prohibited acts.

The final rule as adopted provides penalties where violations are more than *de minimus* and concern, in a more than remote way, the use of the public lands. The Department has addressed commenters' concerns that the provisions should be restricted to violations of terms and conditions that occur on public lands and in connection with the exercise of rights and privileges of the use authorization by adding to § 4140.1 the list of conditions formerly included under § 4170.1–3. Under § 4140.1(c) of this final rule, violations of other State or Federal laws or regulations will not constitute prohibited acts unless public land administered by BLM is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by BLM, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding. This consolidates in one section the list of the types of violations and the three conditions that must be met before a violation of State, Federal, and local laws and regulations constitutes a prohibited act. This reorganization of the provisions from proposed §§ 4140.1 and 4170.1–3 into final § 4140.1 improves the clarity of the final rules by eliminating cumbersome cross-references.

A number of commenters expressed concerns about procedural protection in connection with the imposition of penalties. Under this final rule, enforcement of the penalty provisions is subject to the same Departmental appeal procedures as other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. These provisions provide adequate procedural safeguards, set conventional burdens of proof and provide fair enforcement of the rules. Therefore, the Department has not modified the rule language in response to these concerns.

There was also considerable comment about prohibited acts regarding transit between public and private lands, trespass, straying, and gate closure. Commenters expressed concern about whether the provisions affected the ability of landowners to protect private property or range improvements from trespass and vandalism. Others were concerned that the provisions would affect Department of Agriculture or State agency predator control activities.

Nothing in these rules prohibits landowners from protecting private property from trespass or vandalism, or prohibits the landowner from keeping their gates closed to protect private property. The final rule regarding gates is clarified by the addition of the words ''during periods of livestock use.'' The Department does not intend this provision to apply to situations where gates are left open to give cattle access to forage and water. Closing a gate and consequently denying cattle access to needed forage or water could be covered by the provisions in § 4140.1(a)(5). Nothing in this rule is intended to prevent legitimate use of gates to move and control livestock. The provision of § 4140.1 relating to public access merely reiterates existing requirements. The intent of the provision is to prevent individuals from interfering with lawful uses of the public lands.

The provisions in subpart 4140 apply to BLM's administration of the grazing program on the public lands, and nothing in the subpart prevents the landowner from placing signs on private property to prevent trespass and destruction. Furthermore, nothing in this provision affects Department of Agriculture or State agencies' predator control activities. However, the Department has no authority to prevent human trespass on private lands. Trespass is governed under the State laws in each State.

Stray livestock are a serious problem on public lands. In addition to being an unauthorized use of forage, stray livestock present hazards to vehicles and public land users, carry a potential to transfer disease from sick to healthy stock, disrupt other animals, and cause undesired breedings and unplanned mixtures of livestock gene pools.

It is the responsibility of the permittee to control his or her livestock. However, in evaluating violations, the authorized officer can consider factors beyond the control of the permittee or lessee. For example, the authorized officer could consider the fact that a third party, without any knowledge on the part of the permittee, had destroyed the permittee's fence and as a result livestock had strayed from authorized areas. In contrast, repeated incidents of apparently incidental strays could signify a more serious problem of range management. In such cases, the authorized officer needs authority to penalize the permittee or lessee for the problem.

Some commenters expressed the view that conservation use should not be exempted from the prohibition against failing to make substantial grazing use. Commenters' concerns about conservation use are discussed elsewhere in this preamble, especially at § 4130.2. Failure to make substantial use is discussed at § 4170.1–2.

Some commenters asked whether the rule prohibited alteration of stream courses that might be needed as part of the maintenance of improvements. The proposed and final language indicates that *customary* maintenance of diversion points is an authorized activity. Others were concerned about the provision specifying that attempted payment by a check that is not honored does not constitute a grazing authorization. In response, the language at final § 4140.1(b)(9) has been revised to specify that payment with insufficiently funded checks *on a repeated and willful basis* is a prohibited act.

Other commenters were concerned about the provisions on leasing and subleasing. Nothing in this provision prohibits *authorized* leasing or subleasing. The final rule has been amended to clarify that only unauthorized leasing or subleasing is a prohibited act. The Department understands that transactions that

include the leasing or subleasing of base property and pasturing agreements can be a necessary component of a grazing operation. However, the Department also believes that it has a responsibility to ensure that sublessees are qualified and will be good stewards, that appropriate base property is available, and that livestock grazed pursuant to pasturing agreements must be under the control of the permittee or lessee. Subleasing will be permitted if the authorized officer determines the above criteria are met.

In accordance with the above discussion, § 4140.1 of the proposed rule is adopted as final with the exception of adding the conditions formerly provided at § 4170.1–3 to § 4140.1, addition of the phrase ''repeated and willful'' to paragraph (b)(9), and making minor edits for clarity. Comments on the provisions proposed as § 4170.1–3 are discussed also at that section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

Under the proposal, this section would have been reorganized for clarity and would have added the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated and willful.

The Department received a few comments on this section. Commenters expressed concerns about the definition of violations and penalties to be imposed, and about the process to be followed by the authorized officer in making decisions about violations and penalties. A typical concern was the investigation of violations. Related concerns included how the authorized officer would determine if a violation had occurred.

Other comments included suggestions that violators not be held liable unless violations were repeated and willful, that damages should be limited to that actually sustained, and that various words be defined.

The Department has decided not to adopt any specific definition for terms that are legal standards and are not unique to BLM rules.

The rule adopted today requires that BLM follow a fair, orderly process when investigating violations and assessing penalties. An appeal process is available under subpart 4160 when the violator believes the rules have been inappropriately interpreted. The Department acknowledges that in any regulatory program there is a potential for inconsistent decisions, and intends that this regulatory reform will improve the consistency of rangeland administration throughout the Bureau. Consistency will be enhanced further through additional information and training.

It is not appropriate to limit liability to cases where violations are repeated and willful, because in some cases a single violation can be considerably damaging to the public lands. However, the final rules provide for nonmonetary settlement of nonwillful violations in some cases. Similarly, the Department does not believe it is appropriate to limit penalties to the cost of correcting the problem. The availability of penalties is a common enforcement mechanism that acts as a deterrent to violations and an incentive to comply.

In accordance with the above discussion, § 4150.1 is adopted as proposed.

Section 4150.2 Notice and Order to Remove

In the proposal, this section would have been amended to grant the authorized officer authority to determine if a nonwillful violation is incidental in nature, to outline a process for doing so, and to clarify actions for expeditious resolution of these innocent or unintended trespasses. The ability to close areas for a period of up to 12 months to specified class and kinds of livestock for the sole purpose of abating unauthorized use was also proposed, as was a provision that would have allowed such decisions to be effective upon issuance or on a specified date, and to remain in effect pending a decision on an appeal. Reference to the agents of livestock owners would also have been added to allow the authorized officer to notify an agent of a nonwillful and incidental violation.

The Department received very few comments on this section, most of which related to the administrative burden of pursuing incidental violations and land closures. The Department agrees that pursuing violations for incidental unauthorized use increases the workload for BLM and has provided for relief by making final the provision of the proposed rule that allows for nonmonetary settlement of nonwillful trespass under specific conditions.

In accordance with the above discussion, the Department has adopted § 4150.2 as proposed except for minor changes to eliminate redundancy between § 4150.2 and § 4150.1.

Section 4150.3 Settlement

Under the proposed rule this section would have been amended to provide guidelines for nonmonetary settlements where fees could be waived for unintentional incidental trespasses in a fair manner. The authorized officer could have made a nonmonetary settlement only under the following conditions: the operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would have been amended to base the value of forage on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in each of the 17 western States. Other proposed amendments would have reduced the potential for abuse of discretion by clarifying when a nonmonetary settlement for nonwillful violations may be made.

The Department received very few comments on this section. Nearly all commenters supported the basic principle of nonmonetary settlement but suggested alternatives for implementation. Commenters also sought additional definition or suggested that nonmonetary settlement should be excluded from the record to prevent every violation from being appealed.

The Department believes that the proposed conditions under which the nonmonetary settlement would be used are defined in sufficient detail and are appropriate. The specific circumstances of each case vary greatly and will have to be evaluated in view of the conditions in the rules by the authorized officer to make a determination of nonmonetary settlement.

The Department does not agree with some commenters' suggestions that nonmonetary settlements should be excluded from the record. The purpose of the provision is to ease the administrative burden for the agency and relieve the financial burden for the operator. While nonmonetary settlement may be appropriate under the terms of this rule, unauthorized use should be documented in the record.

The Department has decided to revise the provision of the proposed rule that would have based the settlement fee for unauthorized use on the average of private grazing land lease rates in the 17 western States as reported annually by the Department of Agriculture's National Agriculture Statistics Service. This provision would have provided for an unauthorized use settlement that would have been uniform across all public lands administered by BLM as well as western National Forest System lands. Also, the settlement fee would have been based on the same data set

that would have been used to calculate the forage value index included in the proposal to amend the grazing fee formula, which has not been carried forward in this final rule. The Department has decided to base settlement of unauthorized use on the average private grazing land lease rate, reported annually by the National Agriculture Statistics Service, for the individual State in which the unauthorized use occurs rather than on an average across the 17 States. This change will provide for a more fair settlement across all affected States.

In accordance with the above discussion, the proposed rule is adopted as final except for the noted change from the average private grazing land lease rate for all 17 western States to the average private grazing land lease rate for each individual State.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

The proposed rule would have amended this section to provide clarification that a final decision may be issued without first issuing a proposed decision when action under § 4110.3–3(b) of this part is necessary to stop resource damage, or when action is taken under § 4150.2(d) to close an area to unauthorized grazing use. It would have served to expedite the decision process where immediate action is necessary and would have clarified what information must be contained in a proposed decision. The provision is adopted as proposed.

A number of comments objected to the use of the term ''interested public.'' Comments indicated a concern that the use of the term broadens public participation which may result in delays due to administrative appeals and thus uncertainty for permittees. Comments questioned whether the ''interested public'' would have an interest in the matter they appeal and whether the ''interested public'' would automatically have ''standing'' to challenge the final decision of an authorized officer. One commenter suggested that decisions should be sent to affected public land users, and any party showing a concrete and particular injury from the decision.

The term ''interested public'' replaces the term ''affected interest'' in the existing rules. The definition of the term ''interested public,'' adopted by today's action, appears at § 4100.0–5. One of the goals in adopting the changes to this section is to clarify that the ''interested public'' will be notified of all proposed decisions in order to involve the public in an early stage of the decision making process. Under the existing rules ''affected interests'' were notified of proposed decisions on permits and leases. Today's change provides for notification to the ''interested public.'' The Department expects that by involving the interested public early in the decision making process on such issues as permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs, there will be fewer protests and appeals because parties will have a better understanding of the final decision and the factors considered in reaching the decision. The determination of whether a person has ''standing'' to appeal a final decision of the authorized officer has not been changed. Any person whose interest is ''adversely affected'' by a final decision of the authorized officer may appeal the decision. The OHA determines if a party is ''adversely affected'' and thus has standing to bring an appeal. The Department did not adopt the suggestion to send decisions to only affected public land users and parties showing a concrete and particular injury from the decision since this would have the affect of limiting public participation.

Comments were received on the proposed clarifying amendment to allow the authorized officer to forgo issuance of a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Some comments were supportive of the change. Others indicated that the change was not needed because BLM currently has the ability to place decisions in effect on issuance or on a date specified in the decision without issuing a proposed decision. Other commenters asserted that the provision raises procedural questions, does not provide security of tenure, impacts private and State lands, removes incentives to settle appeals, creates uncertainty for lending institutions, and lowers property values and thus the local tax base.

The changes adopted today clarify that in the case of determinations under § 4110.3–3(b) or § 4150.2(d), the authorized officer does not have to first issue a proposed decision. The Department is making this change to clarify what had been implicit in the existing rules. This is consistent with the interpretation in the existing BLM Manual.

These changes clarify that the authorized officer may act quickly to arrest damage to rangeland resources resulting from conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage. There continues to be a provision to consult with the affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area. The authorized officer will have developed a record prior to taking action which will allow permittees and lessees, the interested public, and the affected State the opportunity to provide pertinent information and to discuss the impacts of adopting a final decision without a protest period. The changes being made preserve the rights of appeal and the ability to seek a stay by those affected by BLM's decisions. Clarifying the existing provision and practice should not create uncertainty for lending institutions nor lower property values and thus the local tax base. Nor should it raise concerns with security of tenure or remove incentives for settling appeals. The Department's intent in adopting this provision is to clarify that the authorized officer does not have to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §§ 4110.3–3(b) or 4150.2(d).

Other comments recommended a notification period for violations, sought an expansion of the protest time period, and suggested a definition of repeated willful violations. The Department is not adopting these suggestions because existing early communication provides sufficient notification and time for protest. Regarding the willful violation suggestion, the Department has concluded that it is more effective to retain discretion to consider each violation of the grazing rules individually to determine the appropriate action.

Section 4160.3 Final Decisions

Under the proposed rule, this section would have been amended to clarify the process for filing an appeal and a petition for a stay of a final decision. Decisions would have been implemented at the end of a 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would have suspended the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to situations where

immediate action was required are automatically stayed upon the timely filing of an appeal.

The amendment also would have clarified how the Departmental rule at § 4.21 would have been applied and the amount of grazing use that would be allowable when a decision has been stayed. Where an appellant had no authorized grazing use the preceding year, the authorized grazing use would have been required to be consistent with the decision pending a final determination on appeal. Appellants affected by this provision would have included persons that are applicants for permit or lease transfers. Where a decision proposed to change the amount of authorized grazing use, the permitted grazing use would not have exceeded the appellant's previously determined permitted use during the time an appeal is pending. Reference to ephemeral use would have been added to the amendments which would have pertained to levels of use pending determination on appeal. This amendment would also have provided for making decisions effective upon issuance or on a date specified in the decision when necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under §§ 4110.3–3 and 4150.2 of this part. These provisions are being adopted as proposed, with minor changes to add references to annual rangeland and OHA and to clarify that the proposed term ''previously permitted use'' means ''authorized use in the last year during which any use was authorized.''

Many comments addressed the proposed change to conform the grazing appeals process with the general appeals provisions of the Department. Some comments supported the changes, while others reflected the same concern expressed in response to § 4160.1, above. Responses to those comments are not repeated here.

Some commenters questioned if the change would provide sufficient procedural protections for the permittee or lessee, and add to the number of stays sought from OHA. Other commenters questioned the authorized officer's discretion to make a decision effectively immediately; whether stay provisions would apply; whether the stay process was in conflict with the factual hearing process; and whether decisions should be placed in immediate effect only if ''required for the orderly administration of the range or for the protection of other resource values.''

It is the Department's intent in making the grazing appeals process consistent with the Department's general appeals process to put decisions in place in a timely manner unless OHA grants a stay. The amendments adopted by today's action preserve the ability to file an administrative appeal and a petition to stay a final decision. The stay provision allows OHA to determine if it is appropriate to stay all or a portion of a final decision.

The rule adopted today provides for two separate mechanisms for the issuance and appeal of decisions: (1) Making decisions effective at the end of a 30-day appeal period and, if a petition for stay is filed, upon any denial of the petition but not later than 75 days from the date of the decision, or (2) making decisions effective upon issuance or on a date specified in the decision to stop or prevent imminent damage to resources, in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d). The first mechanism is expected to serve as the usual way in which decisions will be made. Making decisions effective during the 30 day appeal period will be reserved for situations where immediate action is needed to protect rangeland resources or to abate unauthorized use, in accordance with the standards set forth herein.

The rules governing the consideration of petitions to stay a decision pending appeal are provided at 43 CFR 4.21(b)(i) through (iv), and are not changed by this rulemaking. The standards are (i) the relative harm to the parties if the stay is granted or denied; (ii) the likelihood of the appellant's success on the merits; (iii) the likelihood of immediate and irreparable harm if the stay is not granted; (iv) whether the public interest favors granting the stay. As it does currently, BLM will make available to involved persons the required components of an appeal and petition to stay a decision at the time a final decision is issued. A party will not have to choose between a hearing or seeking a stay. A hearing before an administrative law judge will review the facts associated with an appeal, while OHA will consider stay petitions consistent with the standards at 43 CFR 4.21(b)(1).

In the case of decisions under §§ 4110.3–3(b) and 4150.2(d), the Department has concluded that the rule and BLM Manual provide sufficient guidance to the authorized officer. For this reason, the Department has not adopted the suggestion to place decisions in effect immediately only if ''required for the orderly administration of the range or the protection of other resource values.'' As discussed above, the Department has concluded that this authority is needed to stop or prevent imminent damage to rangeland resources or to abate unauthorized use. The amendments adopted today may result in an increased number of stay petitions, but this is balanced by the benefits of making the grazing appeals process consistent with the general Departmental process.

Section 4160.4 Appeals

Under the proposed rule, this section would have provided instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected would have been able to file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, the OHA is allowed 45 days from the end of the appeal period to review the petition and issue a determination. Under the proposal, a decision would not have been in effect during the consideration of a petition for stay unless it were made effective for reasons under § 4110.3–3(b) or 4150.2(d). The provision would have included a requirement for prompt transmittal by the authorized officer of appeals and petitions for stay to the OHA. These provisions are being adopted as proposed.

Comments filed on this section suggested alternative time limits and questioned if the amendments would encourage appeals by the interested public. Commenters also inquired whether there should be a presumption of grazing use when an applicant had no grazing use the preceding year.

The Department has not adopted the suggestion that the time for appeal or OHA review of petitions for stay should be expanded or limited. Past experience with the timing periods for appeals and stays has indicated that these timing requirements are reasonable. A permittee or lessee will almost always be aware of impending implementation of a decision before the final decision is issued. In addition, except for some cases that require that decisions be placed in immediate effect, the permittee or lessee is provided with a proposed decision, which may be protested, at least 15 days before a final decision is issued. It is the Department's intent in involving the interested public at early stages to reduce the number of protests and appeals because all of the parties will have an understanding of the factors considered in issuing a decision.

The Department has not adopted the view that applicants without grazing use

the preceding year should not be allowed to graze livestock at the levels allowed by a decision that is under appeal. This provision is consistent with the basic concept of subpart 4160 and 43 CFR 4.21 that the decision of the authorized officer will be put into effect unless a stay is granted. The Department intends that this concept apply consistently throughout the rules pertaining to livestock grazing.

Subpart 4170—Penalties

Section 4170.1–1 Penalty for Violations

The proposed rule would have been amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the 17 western States as supplied annually by the National Agricultural Statistics Service, plus all reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation. This penalty would have been more consistent with the penalties provided for unauthorized use and simpler to administer than the penalty provided in the existing rules. This would have facilitated consistent application of the provisions by BLM. The Department has adopted the provision as proposed, with minor clarifying changes. The Department received few comments on this section. Some suggested that penalties should be based on public land AUM values, not private land values. Others stated that the rate suggested in the proposal was punitive. The concept of assessing penalties upon ''value of forage'' removed is not new. Under PRIA and the existing Federal grazing fee formula (from 1985 to present), BLM has assessed penalties for unauthorized use on that basis.

Others stated that using twice the average private rate of all 17 states would be a bargain in some cases, or that BLM should use the private rate for each area. The Department agrees that the private rate for each State should be used to calculate the fee. The final language of the rule is revised to clarify this point.

Some commenters stated that violations should not be penalized unless they were willful. One common comment suggested that penalties should apply to other public land users, not just grazing permittees. Others suggested that the authorized officer should have the authority to cancel a lease or permit, but not be required to do so.

Regarding commenters' concerns about willful violations, the penalties discussed in this section apply specifically to unauthorized leasing and subleasing. Leasing or subleasing agreements are oral or written contractual arrangements between permittees or lessees and third parties, even though the grazing privileges obtained by Federal permittees or lessees is not transferrable or assignable without approval. Such arrangements are willful actions. The authorized officer must produce competent evidence to support a finding that the permittee has in fact violated § 4140.1(a)(6). This section does not alter the procedural rights of permittees under this part. It merely establishes the penalty for unauthorized grazing of livestock owned by persons other than the permittee or lessee or their sons and daughters as provided in this part. It does not apply to authorized base property leases or subleases or authorized pasturing agreements. Other penalties set forth elsewhere in these rules do pertain to public land users who enter public lands without authorization and remove publicly-owned assets or damage public lands.

Some commenters suggested that payment of expenses should be limited to specific legal costs, and that payment of salaries of Federal personnel should not be included. Others stated that none of the statutes listed by BLM provide for revocation of permits as a permissible penalty. The Secretary has adequate legal authority to provide for penalties for such violations. The penalties adopted in this section are fair and consistent with other similar programs, and contribute to BLM's effective enforcement of the grazing program. Pricing Federal forage at market rates can be a very effective deterrent to the use of unauthorized grazing of livestock owned by persons other than the permittee or lessee except for sons and daughters of permittees and lessees.

A typical comment discussed the fact that the proposal imposes the same penalty for unauthorized subleasing as for willful trespass, and suggested that this was excessive since the livestock involved with the subleasing were probably included in an existing authorized permit and therefore a permittee subject to a penalty for subleasing would have paid the grazing fee for authorized use plus the penalty. The Department believes that individuals who have violated the subleasing provisions should be penalized to the same extent as those who have trespassed. In some cases, trespass violations determined to be repeated and willful will result in a penalty of three times the private grazing land lease rate, plus administrative expenses. Experience in resolving cases of livestock trespass has shown a need for a gradient of penalties that can be specific for certain nonwillful, willful, and repeated willful offenses. In the Department's determination, unauthorized pasturing or other unauthorized subleasing will constitute a willful violation of the rules pertaining to grazing and will be discouraged by the penalty of twice the private rate plus administrative expenses. Should such violations be repeated, other enforcement mechanisms are available.

Others stated that the proposal does not take into account use upon intermingled private land maintenance of improvements, or suggested that some sort of penalty should be available to the authorized officer to penalize a permittee, short of cancelling a permit. Differing land ownership patterns could make these provisions more difficult to enforce. However, the provisions adopted do provide for authorizing grazing of public lands by livestock owned by persons other than the permittee or lessee. Penalties for violations of the subleasing or pasturing provisions would be limited to the public land forage AUMs consumed. The authorized officer does have discretion to use lesser sanctions than permit cancellation when warranted.

Others asserted that the penalties were not serious enough to be effective, and suggested that there should be a debarment provision. The penalty established in the final rule is intended to serve as a strong deterrent to unauthorized pasturing of livestock owned by other than permittees, lessees, or their sons or daughters. Setting the penalty at two times the private grazing land lease rate plus administrative expenses will ensure that there is no financial impetus for committing such a violation, i.e. an effective penalty must result in a cost greater than the reward. The provisions adopted today ensure this by using the private land rate, which in itself should generally exceed the cost of public land forage, and then doubling that figure. Administrative costs to be added to the penalty merely serve as a further disincentive to violate the provision and highlight the expenses to the public that result from the detection and resolution of violations of the provisions.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with a few changes. The phrase ''for the 17 western States'' is revised to ''in each State'' and is moved to modify the phrase ''required to pay'' to provide a penalty that is tied to the private land

lease rate in each individual State. This responds to commenters' suggestions and makes the penalty more proportionate to the benefit received from the unauthorized use.

Section 4170.1–2 Failure To Use

This section would have been amended to clarify the consultation requirements imposed on BLM when an authorized officer is considering taking action to cancel, in whole or in part, a permit or lease in response to failure to use. This section also would have clarified that failure to make substantial grazing use as authorized means failure to make active grazing use as approved on a grazing use authorization. Failure to make authorized use may result in monitoring studies providing false information which can cause decisions to over-obligate the forage resource of the rangeland.

Permittees and lessees would have been required to apply and receive approval for nonuse or conservation use. Failure to apply for conservation use or nonuse prevents BLM from having an opportunity to determine if conservation use or nonuse is in conformance with the rules at 43 CFR 4130.2(g) and applicable planning documents.

The proposal would also have included failure to maintain or use water base property in the grazing operation as a type of failure to use. Providing for the use of such waters is critical to the effective administration of grazing within an allotment. Water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to overuse the service areas of the remaining waters.

BLM received very few comments on this section. The Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The most common issue raised was what readers viewed as an exemption from the ''substantial use'' provisions for conservation use. Some commenters who specifically supported cancellation for non-use objected to the exemption for conservation use. Others stated this was a double standard, and that it made no difference to the resource if someone with grazing use simply did not use the permit or if someone had conservation use. Still others stated that permittees with conservation use should be subject to the cancellation provisions for failure to maintain or use water base property.

The Department disagrees that conservation use is an exemption from the substantial use standard. Conservation use is an active use, and therefore provisions regarding failure to use do not apply. Issues regarding conservation use are discussed at § 4130.2.

Some comments asserted there should be no penalty for using a permit less than the permitted use, and that fees collected should be based on actual AUMs used. Others asserted that the proposed changes eliminate any incentive on the part of BLM to reach an agreement with the permittee, and suggested limiting cancellation to situations where the permittee or lessee has failed to maintain use without reason, has unreasonably failed to maintain or use base property or to install or maintain range improvements.

There is no penalty for using less than permitted use provided that the authorized officer has approved either temporary nonuse or conservation use. The Department does not believe that the provisions will be a disincentive to reach an agreement. The provision does not displace the cooperative processes set out in FLPMA, as amended by PRIA. Parties to be consulted are limited to permittees and lessees because any action taken in response to failure to make use will be a ministerial action addressing a requirement of the rule and permit or lease.

Other commenters asked what ''failure to maintain or use water-based property in the grazing operations for two consecutive grazing fee years'' meant. ''Failure to maintain or use water-based property. . . for two consecutive grazing fee years'' means that the permittee has not had cattle on the range for two consecutive years, has not allowed livestock to use the base water, has neglected to conduct necessary repair and maintenance activities of the base water for two consecutive years, or a combination of these three. In response to the commenters' concerns, the final rule as adopted is revised to clarify this point.

One commenter stated that the provision assumes the permittee has the funds to purchase livestock or maintain base property. The commenter was concerned that if the permittee could not get funding, BLM might place a lien on the permittee's base property, thus reducing its collateral value. The Department does assume that the permittee has the funds necessary to maintain a grazing operation, including the purchase or lease of livestock and the maintenance of base water facilities. The BLM will not place liens on base property. If a permittee cannot afford to make use of, or maintain, base water in any one year, there will be no penalty under thus provision. However, if the situation extends into the second year, then BLM will consider cancelling whatever amount of permitted use the permittee or lessee has failed to use, as provided in this section of the final rule.

Regarding specific requests for definitions, the Department believes the use of the term ''substantial use'' is sufficient without definition for purposes of national rules. The meaning of the word ''substantial'' in a legal context has been well-established in the courts.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The language in the final section is rewritten to clarify the meaning of the ''2 consecutive grazing fee years'' provision.

Section 4170.1–3 Federal or State Animal Control and Environmental Protection or Resource Conservation Regulations or Laws

The proposed rule would have amended this section to make subject to penalty under § 4170.1–1 violations of Federal or State regulations or laws that are listed as prohibited acts under § 4140.1 and that pertain to predator animal and pest control, wild free-roaming horses and burros, natural and cultural resources, resource conservation, or the environment. The heading of this section would have been amended to reflect the change in scope. These changes were proposed to conform with similar amendments in § 4140. The types of violations that may result in the withholding, suspension or cancellation of a permit or lease under § 4170.1–1(a) would have been expanded to include violations of regulations and laws that pertain to the protection of the environment and conservation of natural and cultural resources where public lands are involved or affected, the violation is related to grazing use authorized by the permit or lease, and the permittee or lessee has been found to be in violation by the relevant court or other authority and no appeals are outstanding. Principal users of the rangelands should be expected to comply with such laws and regulations. The proposed amendments would have adopted language of the grazing administration regulations that existed before 1984. Today's action adopts the provision with minor clarifying changes, and also moves the entire provision to § 4140.1(c) for clarity.

Commenters on this section were strongly divided on its provisions. Some asserted, as they had on § 4140.1 of the proposal, that inclusion of other statutes

in the penalty provisions of the grazing program was outside the Secretary's legal authority, which they asserted applies only to public lands governed by a grazing permit. Others asserted that the provisions placed too much emphasis on other values, that under this program only grazing values should be considered.

Section 2 of TGA directs the Department to preserve public rangeland and its resources from destruction or unnecessary injury and to provide for the orderly use, improvement, and development of the range to ensure that the public grazing lands are administered in a reasonable and orderly fashion. The Department believes that the language of this section represents a reasonable and practical balance between those responsibilities and limitations placed on it by resource and other practical considerations.

The Secretary has full authority to establish terms and conditions for grazing permits to ensure compliance with the laws affecting public lands. Consideration of natural and cultural resource values is fully consistent with the Department's responsibility for multiple resource management under its statutory authorities. The Department cannot condone violations of other statutes and expects that principal users of public lands, such as grazing permittees, will comply with these statutes in the conduct of their activities. These related statutes do have separate enforcement provisions that would be unaffected by this rule. However, as discussed at § 4140.1, there are limitations placed on the Secretary's authority to impose penalties for violations under other laws. These limitations are that public land administered by the Bureau of Land Management must be involved or affected, the violation must be related to grazing use authorized by a permit or lease, and the permittee or lessee must be convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, with no further appeals outstanding.

Some commenters asked whether lesser violations of State laws would be cause for loss of a permit, or suggested that only repeated, willful violations should be penalized. Others asserted that paragraph (c) should be amended to limit the provision to penalizing violations resulting from court decisions.

The Department does not intend that *de minimis* violations of State or even Federal laws or regulations will result in penalties affecting the grazing permit or lease under this provision. However, the rule as adopted will not affect how violations of State or Federal law or regulations are dealt with initially by the various enforcement or regulatory agencies.

Others stated that the provisions were too narrow, and should apply to additional statutes addressing natural resource protection. One specific suggestion was the American Indian Religious Freedom Act. Some of these commenters suggested that penalties for violation be nondiscretionary. Other comments suggested omitting paragraph (c) altogether on the basis that there is no legal argument to support such a limitation on the Department's responsibility under FLPMA and TGA to promulgate and enforce its own regulations.

As stated in the preamble to the proposed rule, a list of relevant laws will be made available to grazing permittees and lessees. No State or Federal statutes were added to the list presented in the preamble to the proposed rule.

In accordance with the above discussion, the Department has decided to retain the substance of § 4170.1–3, as proposed. However, in response to comments on §§ 4140.1 and 4170.3, the Department has moved the entire section establishing conditions limiting when violations of certain laws and regulations would constitute prohibited acts for the purposes of grazing administration to § 4140.1(c). This change from the proposed rule is intended to clarify the provision by removing cumbersome cross-references and by consolidating discussions of prohibited acts. Further discussion of this provision can be found at that section.

Section 4170.2–1 Penal Provisions Under the Taylor Grazing Act

Under the proposal, this section would have clarified a confusing existing statement by rewriting the provision to state that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500, under the penal provisions of TGA.

The Department received no comments on this section, and it is finalized as proposed.

Section 4170.2–2 Penal Provisions Under the Federal Land Policy and Management Act

The proposed rule would have amended this section to adopt the alternative fines provisions of Title 18 U.S.C. section 3571, which was enacted after enactment of FLPMA. This action would have strengthened the protection of natural or cultural resources under the grazing program. Other language changes consistent with similar changes to § 4170.2–1 regarding willful commission of acts prohibited under § 4140.1(b) would also have been made.

The Department received very few comments on this section. The major theme of the comments was that the establishment of civil and criminal sanctions are outside the authority of the Secretary, but rather are within the exclusive jurisdiction of the legislature.

The Department disagrees that the provisions of this section are outside the authority of the Secretary. The Secretary has full authority to enforce provisions of FLPMA, TGA and other statutes, and has authority to promulgate rules to implement FLPMA and other statutes pertaining to public lands (43 U.S.C. 1740). Section 4170.2–2 establishes the penalty provision for criminal acts.

Subpart 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration (Titled ''National Requirements and Standards and Guidelines for Grazing Administration'' In Proposed Rule)

Under the proposed rule, this subpart would have been added to establish national requirements for the administration of grazing on public lands. It would also have included a provision for the development of State or regional standards and guidelines for grazing administration. These requirements, standards, and guidelines were proposed to establish clear direction for managing rangelands in a manner that would achieve or maintain ecological health, including the protection of habitats of threatened or endangered species and candidate species, and the protection of water quality.

The heading of the subpart is modified from the proposed rule, as noted above.

Section 4180.1 Fundamentals of Rangeland Health (Titled ''National Requirements for Grazing Administration'' In Proposed Rule)

Under the proposed rule, this new section would have established national requirements for grazing administration on public rangelands. Permits, leases, other grazing authorizations and grazing related plans and activities on public lands would have incorporated, as applicable, grazing practices that help achieve healthy, properly functioning ecosystems and riparian systems. All

grazing-related actions on public lands would have been required to conform with the national requirements. Where the national requirements were not being met, the authorized officer would have been required to take corrective action prior to the start of the next grazing season. This would have included actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements. Nothing in the national requirements relating to riparian systems was to be construed to create a water right based on Federal law. The national requirements presented in the proposed rule have been retitled ''fundamentals of rangeland health'' to better reflect the Department's view that they represent the basic components of healthy rangelands. These components will be referred to as the ''fundamentals of rangeland health'' in the discussion below.

The Department received many comments on this section. Comments suggested that establishing fundamentals that were unique to grazing administration discriminated against public land livestock operators and questioned the statutory authority of the Secretary to promulgate such provisions. Other comments expressed the view that the provisions were too lax; still others asserted that the section discounted the role that herbivores have played in the history of the public rangelands and would create problems and complexities in BLM grazing program due to the variation in standards and guidelines.

It is the Department's intent to establish through the fundamentals of rangeland health and the applicable standards and guidelines appropriate grazing practices to help ensure productive rangelands. These fundamentals will guide BLM in the development of plans for public lands and in the authorization of grazing-related activities, consistent with the provisions of FLPMA and TGA, that lead toward or maintain healthy, sustainable rangelands. It is not unusual for BLM programs to have unique requirements that pertain to a particular group of activities on the public lands, for example the Onshore Orders regulating portions of the oil and gas program.

The fundamentals are statements of the conditions that are representative of healthy rangelands across the West, and, as such, are relatively broad as pointed out in some comments. The fundamentals establish the Department's policy of managing for healthy rangelands. State or regional standards and guidelines will be developed, under the umbrella of the fundamentals, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. State or regional standards and guidelines will provide the measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

The focus on the fundamental requirements of healthy rangelands does not discount the role played by herbivores. Applying the principles of ecosystem management to grazing administration requires consideration of herbivores, both wild and domestic. The historical role of herbivores is discussed in some detail in the FEIS on this rule.

The intent in adopting this section is to facilitate compliance with relevant requirements of Acts such as the ESA and the Clean Water Act and to ensure functional rangelands in order to improve ecological conditions while providing for sustainable development. The Department does not agree with some commenters who asserted that the fundamentals would exceed the requirements of the relevant statutes. The fundamentals, along with State or regional standards and guidelines, will be used to establish management practices that are appropriate for the particular region that lead toward or maintain healthy, sustainable rangelands and provide security of tenure for permittees and lessees.

Regarding comments that the section creates complexities and problems for BLM's grazing program due to State or regional variations, the Department has concluded that such variation is necessary to address the specific conditions present within individual areas. The fundamentals, however, provide the basic components of healthy rangelands that will apply to all States and regions (exclusive of Alaska). These overarching principles will be supplemented by standards and guidelines that will be tailored to more local conditions.

Finally, some commenters also asserted that the fundamentals of rangeland health and the standards and guidelines would result in a ''taking'' if grazing use was modified as a result of this section. Issues associated with ''takings'' are discussed in the General Comments section.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed with reordering and modifications for clarity, adding wording that requires significant progress toward meeting the fundamentals, and rewording to incorporate more fully a watershed management approach.

Section 4180.2 Standards and Guidelines for Grazing Administration

Under the proposed rule, this new section would have established the requirements for the development of standards and guidelines for grazing administration on public lands, and guiding principles for their development. All grazing related actions within the affected area would have been required to conform with the appropriate standards and guidelines. The geographical area to be covered by the standards and guidelines to be developed pursuant to this section were to be determined by the BLM State Director. Standards and guidelines would have been required to be developed for an entire State, or for an ecoregion including portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands could not be ensured by using standards and guidelines developed for a larger geographical area. The preparation of standards and guidelines would have involved consultation with multiple resource advisory councils, coordination with Indian tribes, and Federal agencies responsible for the management of lands within the affected area. Public participation would have included the involvement of the interested public.

The proposed rule would have established guiding principles to be addressed in the development of standards and guidelines. The guiding principles for standards to be developed were to have pertained to the minimum soil, water and biological conditions required for rangeland ecosystem health. All standards for grazing administration would have been required to address factors relating to soil stability and watershed function, the distribution of nutrients and energy, and the recovery mechanisms of plant communities and riparian functioning conditions. The guiding principles for the development of guidelines for grazing administration were to have pertained to the types of management actions necessary to ensure that the standards could be met. Included in

these guiding principles were the requirements that State or regional guidelines address grazing practices that can be implemented to benefit threatened or endangered species and candidate species, and to maintain, restore or enhance water quality; critical periods of plant growth or regrowth and the need for rest from livestock grazing; situations in which continuous season-long grazing, or use of ephemeral rangelands, could be authorized; the allowable types and location of certain range improvements and management practices; and utilization or residual vegetation limits.

The proposed rule would have provided that where State or regional standards and guidelines were not developed within 18 months after the effective date of the proposed rule, fallback standards and guidelines included in the text of the rule would be implemented. The fallback standards addressed the same factors relating to soil stability and watershed function, the distribution of nutrients and energy, the recovery mechanisms of plant communities, and riparian functioning condition as provided for under the guiding principles. The fallback guidelines addressed the grazing management practices that would be acceptable across a broad variety of rangelands. Both the proposed fallback standards and fallback guidelines were general in order to be applicable to most western rangelands.

As with the previous section, some commenters questioned whether the provisions for standards and guidelines were discriminatory and whether they exceeded the requirements of numerous statutes. These comments were addressed above under the discussion of § 4180.1. Some commenters expressed views that the standards and guidelines should be developed in coordination, cooperation and consultation with permittees, that local grazing advisory boards should be retained and involved, and that local and county government should be consulted. Some commenters questioned the expertise of the RACs to develop standards and guidelines and questioned why the interested public and the public in general is included in the development process.

Some commenters asserted that the 18-month development period is too short and that the fallback provisions should be eliminated. Others questioned whether there should be any waiting period before the fallback standards and guidelines come into effect.

Some commenters asserted that the standards and guidelines should be developed through the land-use planning process. Comments were received that questioned the efficacy of the standards and guidelines while some felt the standards and guidelines were too strict and would harm livestock operations. Finally, a few commenters questioned the intent and wording of individual guiding principles and fallback standards and guidelines.

The Department recognizes the need for an effective partnership with livestock operators and will continue to work closely with them. The Department has also concluded that public land management in general will be improved by providing for a more inclusive partnership which extends to RACs, the interested public, and State and local government. The RACs, the interested public and the public in general will be involved in the development of the standards and guidelines. RAC members will have a variety of qualifications that will contribute to the standards and guidelines development process. Grazing permittees and lessees will be represented on the RACs and will have a variety of opportunities to provide input to BLM through the RACs and public forums during the development of State or regional standards and guidelines. The RACs and their subgroups will be able to provide technical advice in a manner similar to the former grazing advisory boards, while at the same time representing a broader array of interests. For further discussion of member qualifications and experience, see section-by-section analysis of subpart 1780.

The Department has concluded that the 18-month time frame for development of the State or regional standards and guidelines will provide adequate time to develop appropriate standards and guidelines for several reasons. First, the standards and guidelines build off of current range science, existing policies and land-use planning decisions concerning grazing activities. Second, it is anticipated that any additional NEPA analysis that may be needed can be tiered from the FEIS for this rule and incorporate analyses of other NEPA documents. The Department believes that an 18-month period is necessary to allow opportunity to consider local needs and concerns. In the long term, the Department believes that a development process that considers local circumstances along with national priorities will produce superior standards and guidelines.

The fallback standards and guidelines are intended to provide protection should the development of the State or regional standards take longer than anticipated. The fallbacks are relatively general because they are intended to be applicable wherever State or regional standards and guidelines have not been put into effect within 18 months of the effective date of this final rule. The fallback provisions cannot be as specific or detailed as State or regional standards and guidelines that will be tailored to the conditions and needs of each State or region.

Concerning the comment that the standards and guidelines should be developed through the land-use planning process, State or regional standards or guidelines that are inconsistent with existing land use plans will be analyzed in land use plan amendments. Management decisions such as resource condition objectives, thresholds, stipulations, and terms and conditions of BLM use authorizations that have been or are developed for purposes other than State or regional standards and guidelines for grazing administration are not subject to the provisions of developing and approving standards or guidelines presented in § 4180.2. For example, an AMP decision that livestock use should not exceed a specified level of usage would not constitute a standard that would be subject to the provisions of § 4180.2, but would remain as an AMP decision. However, the Department expects that the merits of officially adopting existing land use plan and other management decisions as State or regional standards or guidelines will be considered and that many proven practices will serve as the basis for State or regional standards or guidelines.

The fundamentals of rangeland health, guiding principles for standards and the fallback standards address ecological components that are affected by all uses of public rangelands, not just livestock grazing. However, the scope of this final rule, and therefore the fundamentals of rangeland health of § 4180.1, and the standards and guidelines to be made effective under § 4180.2, are limited to grazing administration. Under this final rule, actions are to be taken by the authorized officer upon determining that grazing management practices and levels of use on public lands are significant factors in preventing achievement of the standards and conformance with the guidelines. Application of the principles contained in subpart 4180 to uses of public rangelands other than authorized grazing activities would require separate action by BLM or the Department.

Some commenters questioned how the PACFISH standards and guidelines affect the standards and guidelines developed in this section. The Department recognizes that

coordination between the PACFISH effort and BLM range program is essential. The Rangeland Reform '94 EIS considered cumulative impacts of PACFISH and rangeland reform. Nothing in subpart 4180 is intended to affect special planning efforts such as those related to anadromous fish habitat (PACFISH) or the Upper Columbia River Basin EIS. These are separate efforts that will be coordinated, as appropriate, with activities under subpart 4180.

Concerning the comment that the standard and guideline provisions are too strict and will drive livestock operators out of business, the guiding principles for the State or regional standards and guidelines are designed to allow State and regional issues to be considered while still resulting in significant progress toward established goals. Specific quantitative assessment methods for the listed items were not proposed because the Department believes specific assessment methodologies should be chosen in light of more site-specific considerations.

The guiding principles for standards and guidelines require that State or regional standards and guidelines address the basic components of healthy rangelands. The Department believes that by implementing grazing-related actions that are consistent with the fundamentals of § 4180.1 and the guiding principles of § 4180.2, the long-term health of public rangelands can be ensured. The fallback standards and guidelines will also lead to improved rangeland health, but the fallbacks do not provide the same opportunities for tailoring to meet more-local resource conditions and livestock management practices.

Standards and guidelines will be implemented through terms and conditions of grazing permits, leases, and other authorizations, grazing-related portions of activity plans (including AMPs), and through range improvement-related activities. The Department anticipates that in most cases the standards and guidelines themselves will not be terms and conditions of various authorizations but that the terms and conditions will reflect the standards and guidelines. For example, a standard for maintaining water quality may be implemented via a condition of a permit that livestock will not be allowed to occupy specified riparian areas during a certain time of year. In assessing the health of rangelands to determine whether action of the authorized officer is necessary, the BLM will generally consider the extent to which standards are being met and guidelines followed across the area of a grazing allotment or group of allotments. The Department intends that failing to comply with a standard in an isolated area would not necessarily result in corrective action.

The Department recognizes that it will sometimes be a long-term process to restore some rangelands to properly functioning condition. The Department intends that the standards and guidelines will result in a balance of sustainable development and multiple use along with progress towards attaining healthy, properly functioning rangelands. For that reason, wording has been adopted in this final rule that will require the authorized officer to take appropriate action upon determining that existing grazing management practices are failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines.

Also, the Department recognizes that it is not possible to complete all assessments of rangeland health and to take appropriate corrective action, pursuant to § 4180.2(c) of this final rule, immediately upon completion of the State or regional standards and guidelines or upon the fallbacks taking effect. The Department intends that assessments and corrective actions will be undertaken in priority order as determined by BLM.

In some areas, it may take many years to achieve healthy rangelands, as evidenced by the fundamentals, established standards, and guidelines. The Department recognizes that, in some cases, trends may be hard to even document in the first year. The Department will use a variety of data including monitoring records, assessments, and knowledge of the locale to assist in making the ''significant progress'' determination. It is anticipated that in many cases it will take numerous grazing seasons to determine direction and magnitude of trend. However, actions will be taken to establish significant progress toward conformance as soon as sufficient data are available to make informed changes in grazing practices.

Many commenters had suggestions or concerns specific to one or more of the guiding principles or fallback standards or guidelines. Commenters asserted the requirement pertaining to A-horizon soils was unrealistic, that suitability determinations need to be addressed, and that greater specificity should be provided for water quality and the protection of riparian areas. Commenters also stated that the standards and guidelines should include a prohibition on exceeding the livestock-carrying capacity and should require an upward trend in soil and vegetation.

The Department agrees that the A-horizon requirement would not serve as a useful standard on some BLM-administered lands since some naturally-occurring soil structures do not conform to this requirement. The standard that referenced ''A'' soil horizons has not been carried forward in this final rule. Comments suggesting the addition of suitability determinations have been addressed in the section-by-section analysis for § 4130.2. This final rule does not add a requirement for suitability determinations. The Department has decided not to add more detailed guidance pertaining to water quality or riparian areas but the wording of the guiding principles and fallbacks has been modified from that of the proposed rule to provide greater focus on watershed function. The Department intends that more specific provisions will be considered in the development of State or regional standards and guidelines following consideration of public input and the site-specific characteristics of the public rangelands. The concern that grazing use not be allowed to exceed the livestock carrying capacity is dealt with in §§ 4110.2–2 and 4110.3 of this final rule. The suggestion that public rangelands be required to exhibit an upward trend in condition is adopted, in part, through the addition of the requirement that action be taken to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines when the authorized officer determines that grazing management practices or levels of use are significant factors in failing to meet the standards or conform with the guidelines.

References to meeting the minimum requirements of the ESA and State water quality standards have been removed from the fallback standards and guidelines. Both ESA requirements and water quality standards are included in the fundamentals presented in § 4180.1 of this final rule and, therefore, do not need to be restated in the fallbacks. The fallback guidelines retain reference to promoting the restoration and maintenance of habitats of special status species, to make clear that it is the Department's intent to take reasonable measures to interrupt the decline of such habitats.

References to minimum ESA requirements and State water quality standards have been retained in the guiding principles for the development of State or regional standards and guidelines. The Department intends that, as State or regional standards and

guidelines are developed, more specific and useful application of ESA requirements and water quality standards can be made. For instance, habitat requirements may be presented in measurable terms or tied to specific areas within the State or region.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications for clarity, consolidation and reordering of paragraphs, clarifying the concept of upward trend by adding the requirement for making ''significant progress'' toward fulfilling the standards and toward conforming with the guidelines, removal from the fallbacks the redundant reference to ESA requirements and State water quality standards, and to incorporate more fully a watershed management approach and current science consistent with rangeland health goals.

VI. Procedural Matters

NEPA

The BLM analyzed the impacts of these final rules in its ''Rangeland Reform '94: Final Environmental Impact Statement,'' in accordance with section 102(2)(C) of the NEPA of 1969 (42 U.S.C. 4332(c)(C)).

A Record of Decision for the EIS for Rangeland Reform '94 was issued on February 13, 1995. The Department's decision is represented in the rule adopted today. The ROD departs from the preferred alternative in the FEIS in that it retains the existing grazing fee formula, identified as the PRIA (No Action) alternative, and makes minor modifications to the Preferred Management alternative. Changes made from the Preferred Management alternative of the FEIS, and adoption of the No Action Fee alternative, which are represented in the Record of Decision and this final rule, were found to be within the range of alternatives considered in the FEIS. Also, these changes were found not to affect the analysis of environmental consequences presented in the FEIS.

Executive Order 12778: Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of Executive Order 12778, Civil Justice Reform (56 FR 55195). The requirements of the Executive Order are covered by the preamble discussion of this rule. The Department certifies that this rule meets the applicable standards provided in Section 2(a) and 2(b)(2) of that Order. Where applicable, the recommendations and analyses required under Section 2(d) of that Order are attached to the certification and included in the administrative record of this rule.

Regulatory Flexibility Act

The Department has determined that this final 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.*). A final regulatory flexibility analysis has been prepared and may be requested from the following address: Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240. The final rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Executive Order 12630

This rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule if it were promulgated as currently drafted. Because the relevant statutes and rules governing grazing on Federal land and case law interpreting said statutes and rules have consistently recognized grazing on Federal land as a revocable license and not a property interest, it has been determined that this final rule does not present a risk of a taking.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by OMB under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Author

The principal authors of this final rule are Annetta L. Cheek and Charles Hunt, Regulatory Management Team, with the assistance of many other staff members of the Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining.

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

For the reasons stated in the preamble and under the authority of the FACA (5 U.S.C. Appendix), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), the TGA of 1934 (43 U.S.C. 315, 315a–r), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (43 U.S.C. 1181d), and the FLPMA of 1976 (43 U.S.C. 1739, 1740), part 4 of subtitle A of title 43, and part 1780, group 1700, subchapter A, and part 4100, group 4100, subchapter D, of subtitle B of chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. The authority citation for subpart E of part 4 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

3. Section 4.477 is amended by removing paragraph (a); removing the paragraph designations (b) (1), (2), and (3); and revising the first sentence of the paragraph to read as follows:

§ 4.477 Effect of decision suspended during appeal.

Notwithstanding the provisions of § 4.21(a) of this part pertaining to the period during which a final decision will not be in effect, and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

4. The authority citation for part 1780 is revised to read as follows:

Authority: 5 U.S.C. App. (Federal Advisory Committee Act); 43 U.S.C. 1739.

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

5. Section 1784.0–5 is amended by removing from paragraph (d) the term ''Authorized representative'' and adding in its place the words ''Designated Federal officer''.

6. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter; they have demonstrated experience or knowledge of the geographical area under the purview of the advisory committee; and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

7. Section 1784.2–2 is amended by revising paragraphs (a)(1), and (b), and by adding a new paragraph (c) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees, including resource advisory councils, and may serve on subgroups of such advisory councils;

* * * * *

(b) No advisory committee members, including members of resource advisory councils, and no members of subgroups of such advisory committees, shall participate in any matter in which the members have a direct interest.

(c) Members of advisory committees shall be required to disclose their direct or indirect interest in leases, licenses, permits, contracts, or claims and related litigation which involve lands or resources administered by the Bureau of Land Management. For the purposes of this paragraph, indirect interest includes holdings of a spouse or a dependent child.

8. Section 1784.3 is amended by removing paragraphs (a), (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1) and (b)(2) as paragraphs (a)(1) and (a)(2), respectively; adding introductory text before newly redesignated paragraph (a)(1); removing from newly redesignated paragraph (a)(1) the word ''district'' and adding in its place the words ''geographical area''; removing paragraph (b) and redesignating paragraphs (e) and (f) as paragraphs (b) and (c), respectively; removing the words ''his authorized representative'' from newly redesignated paragraph (c) and adding in its place the words ''the designated Federal officer''; and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703. No reimbursement shall be made for expenses incurred by members of subgroups selected by established committees, except that the designated Federal officer may reimburse travel and per diem expenses to members of subgroups who are also members of the parent committee.

§ 1784.5–1 and 1784.5–2 [Amended]

9. Sections 1784.5–1 and 1784.5–2 are amended by removing the phrase ''his authorized representative'' and adding in its place the phrase ''the designated Federal officer.''

10. Section 1784.6 is revised to read as follows:

§ 1784.6 Membership and functions of resource advisory councils and sub-groups .

11. Section 1784.6–1 is revised to read as follows:

§ 1784.6–1 Resource advisory councils—requirements.

(a) Resource advisory councils shall be established to cover all lands administered by the Bureau of Land Management, except where—

(1) There is insufficient interest in participation to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed; or

(2) The location of the public lands with respect to the population of users and other interested parties precludes effective participation.

(b) A resource advisory council advises the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area. Except for the purposes of long-range planning and the establishment of resource management priorities, a resource advisory council shall not provide advice on the allocation and expenditure of funds. A resource advisory council shall not provide advice regarding personnel actions.

(c) The Secretary shall appoint the members of each resource advisory council. The Secretary shall appoint at least 1 elected official of general purpose government serving the people of the area to each council. An individual may not serve concurrently on more than 1 resource advisory council. Council members and members of a rangeland resource team or other local general purpose subgroup must reside in 1 of the States within the geographic jurisdiction of the council or subgroup, respectively. Council members and members of general purpose subgroups shall be representative of the interests of the following 3 general groups:

(1) Persons who—

(i) Hold Federal grazing permits or leases within the area for which the council is organized;

(ii) Represent interests associated with transportation or rights-of-way;

(iii) Represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(iv) Represent the commercial timber industry; or

(v) Represent energy and mineral development.

(2) Persons representing—

(i) Nationally or regionally recognized environmental organizations;

(ii) Dispersed recreational activities;

(iii) Archeological and historical interests; or

(iv) Nationally or regionally recognized wild horse and burro interest groups.

(3) Persons who—

(i) Hold State, county or local elected office;

(ii) Are employed by a State agency responsible for management of natural resources, land, or water;

(iii) Represent Indian tribes within or adjacent to the area for which the council is organized;

(iv) Are employed as academicians in natural resource management or the natural sciences; or

(v) Represent the affected public-at-large.

(d) In appointing members of a resource advisory council from the 3 categories set forth in paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Secretary shall provide for balanced and broad representation from within each category.

(e) In making appointments to resource advisory councils the Secretary shall consider nominations made by the Governor of the State or States affected and nominations received in response to public calls for nominations pursuant to § 1784.4–1. Persons interested in serving on resource advisory councils may nominate themselves. All nominations shall be accompanied by letters of reference from interests or organizations to be represented.

(f) Persons appointed to resource advisory councils shall attend a course of instruction in the management of rangeland ecosystems that has been approved by the Bureau of Land Management State Director.

(g) A resource advisory council shall meet at the call of the designated Federal officer and elect its own officers. The designated Federal officer shall attend all meetings of the council.

(h) Council charters must include rules defining a quorum and establishing procedures for sending recommendations forward to BLM. A quorum of council members must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least a majority of each of the 3 categories of interest from which appointments are made.

(i) Where the resource advisory council becomes concerned that its advice is being arbitrarily disregarded, the council may request that the Secretary respond directly to such concerns within 60 days of receipt. Such a request can be made only upon the agreement of all council members. The Secretary's response shall not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal, and shall not be appealable.

(j) Administrative support for a resource advisory council shall be provided by the office of the designated Federal officer.

12. A new § 1784.6–2 is added to read as follows:

§ 1784.6–2 Resource advisory councils—optional features.

(a) Resource advisory councils must be established consistent with any 1 of the 3 models in paragraphs (a)(1), (a)(2), and (a)(3) of this section. The model type and boundaries for resource advisory councils shall be established by the BLM State Director(s) in consultation with the Governors of the affected States and other interested parties.

(1) Model A

(i) *Council jurisdiction.* The geographic jurisdiction of a council shall coincide with BLM District or ecoregion boundaries. The Governor of the affected States or existing resource advisory councils may petition the Secretary to establish a resource advisory council for a specified Bureau of Land Management resource area. The councils will provide advice to the Bureau of Land Management official to whom they report regarding the preparation, amendment and implementation of land use plans. The councils will also assist in establishing other long-range plans and resource management priorities in an advisory capacity, including providing advice on the development of plans for range improvement or development programs.

(ii) *Membership.* Each council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least 3 council members from each of the 3 categories of interest from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least 3 council members from each of the 3 categories of interest from which appointments are made.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a resource advisory council provides advice, down to the level of a single allotment. These teams may be formed by a resource advisory council on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council regarding issues pertaining to the administration of grazing on public land within the area for which the rangeland resource team is formed.

(A) Rangeland resource teams will consist of 5 members selected by the resource advisory council. Membership will include 2 persons holding Federal grazing permits or leases. Additional members will include 1 person representing the public-at-large, 1 person representing a nationally or regionally recognized environmental organization, and 1 person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least 1 member must be selected from the membership of the resource advisory council.

(B) The resource advisory council will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

(C) All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by the BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the resource advisory council and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

(D) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team.

The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(2) Model B

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The purpose of the council is to promote federal, state, and local cooperation in the management of natural resources on public lands, and to coordinate the development of sound resource management plans and activities with other states. It will provide an opportunity for meaningful public participation in land management decisions at the state level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c), and will include at least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor shall chair the council.

(iii) *Quorum and voting requirements.* The charter of the council shall specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Local rangeland resource teams may be formed by the Statewide council, down to the level of a 4th order watershed. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the resource advisory council, an 80% affirmative vote will be required to send a recommendation to the resource advisory council.

(A) Rangeland resource teams will not exceed 10 members and will include at least 2 persons from environmental or wildlife groups, 2 grazing permittees, 1 elected official, 1 game and fish district representative, 2 members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for 2 year terms by the resource advisory council and may be reappointed. No member may serve on more than 1 rangeland resource team.

(B) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team. The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(3) Model C

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council shall be 10 to 15 members, distributed in a balanced fashion among the 3 interest groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each interest group must be present to constitute a quorum and conduct official business, and that a majority of each interest group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Resource advisory councils may form more local teams to provide general local level input to the resource advisory council on issues necessary to the successful functioning of the council. Such subgroups can be formed in response to a petition from local citizens or on the motion of the resource advisory council. Membership in any subgroup formed for the purpose of providing general input to the resource advisory council on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c).

(A) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a local team. The purpose of such technical review teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(B) [Reserved]

§ 1784.6–3 through 1784.6–5 [Removed]

13. Sections 1784.6–3 through 1784.6–5 are removed.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

14. The authority citation for part 4100 is revised to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

15. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

16. Section 4100.0–5 is amended by removing the definition of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing''; revising the definitions of

''Active use,'' ''Actual use,'' ''Allotment management plan (AMP),'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and by adding in alphabetical order the definitions of ''Activity plan,'' ''Affiliate,'' ''Annual rangelands,'' ''Conservation use,'' ''Ephemeral rangelands,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing'' to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

* * * * *

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term ''control'' means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

* * * * *

Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of—

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving rangeland conditions; or

(3) Enhancing resource values, uses, or functions.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

* * * * *

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference or *preference* means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

* * * * *

Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.

* * * * *

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

* * * * *

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

17. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

18. A new § 4100.0–9 is added to read as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Subpart 4110—Qualifications and Preference

19. Section 4110.1 is amended by redesignating the introductory text of the section, and paragraphs (a), (b), and (c) as the introductory text of paragraph (a), (a)(1), (a)(2), and (a)(3), respectively, revising the introductory text of newly redesignated paragraph (a), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.5, and 4130.6–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when—

(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(d) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

20. Section 4110.1–1 is revised to read as follows:

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of § 4110.1.

21. Section 4110.2–1 is amended by revising paragraphs (a)(1), (a)(2) and (c) to read as follows:

§ 4110.2–1 Base Property.

(a) * * *

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

* * * * *

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

* * * * *

22. Section 4110.2–2 is amended by removing the term ''grazing preference'' from paragraph (c) and adding in its place the term ''permitted use'' and by revising the section heading and paragraph (a) to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

* * * * *

23. Section 4110.2–3 is amended by redesignating paragraph (f) as paragraph (g), removing from paragraph (b) the term ''grazing preference'' and adding in its place the term ''permitted use,'' revising paragraph (a)(1), and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) The transferee shall meet all qualifications and requirements of §§ 4110.1, 4110.2–1, and 4110.2–2.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

24. Section 4110.2–4 is revised to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

25. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

26. Section 4110.3–1 is amended by removing the words ''grazing preferences'' from paragraph (b) and adding in their place the words ''suspended permitted use''; removing from paragraph (c)(2) the term ''grazing preference'' and adding in its place the term ''permitted use'' and removing the words ''and/or'' and adding in their place the word ''and''; revising the section heading, paragraph (a), the introductory text of paragraph (c), and paragraph (c)(1), to read as follows:

§ 4110.3–1 Increasing permitted use.

* * * * *

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

* * * * *

(c) After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

27. Section 4110.3–2 is amended by revising the section heading, removing from paragraph (a) the term ''Active'' and adding in its place the term ''Permitted,'' removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing permitted use.

* * * * *

(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

28. Section 4110.3–3 is revised to read as follows:

§ 4110.3–3 Implementing reductions in permitted use.

(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing § 4110.3–2 shall be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

29. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available

forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

30. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§ 4130.3, 4130.3–1, 4130.3–2 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the multiple resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

31. Section 4120.3–1 is amended by adding the words ''range improvement'' immediately before the word ''agreement'' in paragraphs (b) and (e), and by adding a new paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

32. Section 4120.3–2 is revised to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

(a) BLM may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by BLM to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by BLM does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

33. Section 4120.3–3 is amended by revising the first sentence of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 4120.3–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. * * *

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the

fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

34. Section 4120.3–8 is added to read as follows:

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which BLM is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

35. Section 4120.3–9 is added to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

36. Section 4120.5 is added to read as follows:

§ 4120.5 Cooperation.

37. Section 4120.5–1 is added to read as follows:

§ 4120.5–1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

38. Section 4120.5–2 is added to read as follows:

§ 4120.5–2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

39. Sections 4130.1 through 4130.8 are redesignated as follows:

Old section	New section
4130.1	4130.1–1
4130.1–1	4130.4
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–2
4130.4–3	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130.3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

40. Section 4130.1 is added to read as follows:

§ 4130.1 Applications.

41. Newly redesignated § 4130.1–1 is amended by revising the heading to read as follows:

§ 4130.1–1 Filing applications.

42. Section 4130.1–2 is amended by revising paragraph (b), removing the word ''and'' from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources;

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

43. Section 4130.2 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (i), respectively, revising paragraphs (a) and newly redesignated paragraph (d) and by adding new paragraphs (b), (f), (g), and (h) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits and leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

* * * * *

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

* * * * *

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, AMP or other activity plans and the provisions of subpart 4180 of this part.

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.6–2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.6–2.

* * * * *

44. Newly redesignated § 4130.3 is revised to read as follows:

§ 4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

45. Newly redesignated § 4130.3–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.3–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

46. Newly redesignated § 4130.3–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding an ''; and'' and by adding a new paragraph (h) to read as follows:

§ 4130.3–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

* * * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

47. Newly redesignated § 4130.3–3 is revised to read as follows:

§ 4130.3–3 Modification of permits or leases.

Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

48. Newly redesignated § 4130.4 is amended by revising the heading and paragraph (b) to read as follows:

§ 4130.4 Approval of changes in grazing use within the terms and conditions of permits and leases.

* * * * *

(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.

49. Newly redesignated § 4130.5 is amended by designating the text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 4130.5 Free-use grazing permits.

* * * * *

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

50. Reserved §§ 4130.5–1 through 4130.5–3 are removed.

51. In newly redesignated § 4130.6–1, paragraph (a) is revised to read as follows:

§ 4130.6–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

52. Newly redesignated § 4130.6–2 is amended by adding a sentence to the end to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

* * * The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.

53. Newly redesignated § 4130.6–3 is revised to read as follows:

§ 4130.6–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

54. Newly redesignated § 4130.7 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 4130.7 Ownership and identification of livestock.

* * * * *

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

55. Newly redesignated § 4130.8–1 is amended by revising paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, adding a new paragraph (d) and amending newly designated paragraph (e) by adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of entering the public lands or other lands administered by BLM; by any such weaned animals regardless of age; and by such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of AUMs.

(d) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in § 4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per AUM for the appropriate State as determined by the National Agricultural Statistics Service.

(e) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. * * * Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

* * * * *

56. The first sentence of newly designated § 4130.8–3 is revised to read as follows:

§ 4130.8–3 Service charge.

A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

Subpart 4140—Prohibited Acts

57. Section 4140.1 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2), (a)(6), the introductory text of paragraph (b), paragraphs (b)(1)(i), (b)(5), (b)(7), (b)(9), and (b)(10); and by adding paragraphs (b)(11), and (c) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under § 4170.1:

* * * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.

* * * * *

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts related to rangelands to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

* * * * *

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

* * * * *

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) Performance of an act listed in paragraphs (c)(1), (c)(2) or (c)(3) of this section where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, constitutes a prohibited act that may be subject to the civil penalties set forth at § 4170.1–1.

(1) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(2) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(3) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

58. Section 4150.1 is amended by designating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

59. Section 4150.2 is amended by redesignating paragraph (b) as paragraph (c), and adding new paragraphs (b) and (d) to read as follows:

§ 4150.2 Notice and order to remove.

* * * * *

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

60. Section 4150.3 is amended by removing the quotation mark, semicolon, and the word ''and'' at the end of paragraph (c), and removing the first sentence of the introductory text, and revising the sentence following the new first sentence of the introductory text, and revising paragraph (a) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

61. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall

reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§ 4130.8 and 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d).

§§ 4160.1–1 and 4160.1–2 [Removed]

62. Sections 4160.1–1 and 4160.1–2 are removed.

63. Section 4160.3 is amended by removing from paragraph (b) the words ''on other affected interests'' and adding in their place the words ''the interested public,'' revising paragraph (a), and paragraph (c), and adding new paragraphs (d), (e), and (f) to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

* * * * *

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§ 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

(f) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in § 4.21(a)(1) of this title.

64. Section 4160.4 is revised to read as follows:

§ 4160.4 Appeals.

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in § 4.470 of this title. As stated in that part, the decision must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in § 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

Subpart 4170—Penalties

65. Section 4170.1–1 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person found to have violated the provisions of § 4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. * * *

66. Section 4170.1–2 is revised to read as follows:

§ 4170.1–2 Failure To use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

§ 4170.1–3 [Removed]

67. Section 4170.1–3 is removed.

68. Section 4170.2–1 is revised to read as follows:

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than $500.

69. Section 4170.2–2 is revised to read as follows:

§ 4170.2–2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

70. Subpart 4180 is added to read as follows:

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Sec.

4180.1 Fundamentals of rangeland health.
4180.2 Standards and guidelines for grazing administration.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of § 4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

(1) Watershed function;

(2) Nutrient cycling and energy flow;

(3) Water quality;

(4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, and other special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section.

(1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) *Fallback guidelines.* (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Bruce Babbitt,

Secretary of the Interior.

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 886, 887, and 888
Abandoned Mine Reclamation Grant Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 886, 887, and 888

RIN No. 1029–AB72

Abandoned Mine Reclamation Grant Procedures

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

ACTION: Final rule.

SUMMARY: These regulations incorporate new grant procedures implemented by OSM and make editorial changes to ensure consistency with the statutory changes to Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95–87.

EFFECTIVE DATE: March 24, 1995.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rules and Disposition of Comments
III. Procedural Matters

I. Background

A. Summary of the Abandoned Mine Land (AML) Program

The AML Program was established by SMCRA, Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, in response to concern over extensive environmental damage caused by past coal mining activities. In effect, the Abandoned Mine Reclamation Fund (Fund) and the program it supports is the coal industry's equivalent to the ''Superfund'' administered by the Environmental Protection Agency to address hazardous waste discharges.

The eligibility requirements for reclamation of abandoned mine lands are contained in Section 404 of SMCRA. Funding of reclamation projects is subject to a priority schedule. For example, ''Priority 1'' projects concern those that involve the protection of public health, safety, general welfare, and property from extreme danger of the adverse effects of coal mining practices. ''Priority 3'' projects, on the other hand, concern environmental problems associated with past coal mining practices that do not necessarily constitute a public health or safety threat or affect the general welfare.

The Fund, administered by the Secretary of the Interior through OSM, is financed by a reclamation fee assessment on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal, and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress.

The Fund is divided into the State/Indian tribe and Federal shares with each State or Indian tribe under a federally approved reclamation program entitled to fifty percent of the reclamation fees collected from coal operations within the State or respective Indian lands. Annually, these States/Indian tribes receive grants to carry out reclamation projects under their AML programs. States are authorized to use up to $3 million of their State-share funds to establish State coal mine subsidence insurance programs, and are also authorized to deposit up to ten percent of their annual grants into special interest-bearing State trust accounts available for future reclamation purposes or for acid mine drainage reclamation projects.

The Federal expenses share of the Fund is allocated among a number of programs such as Federal emergency projects (involving sudden and life-threatening situations that demand immediate attention), high-priority reclamation projects in States and Indian lands without federally approved reclamation programs (referred to as ''nonprogram'' States/Indian tribes), and the Small Operator Assistance Program, which provides financial assistance to small coal operators to help defray certain costs associated with the surface coal mining permitting process. At present, 23 States and three Indian tribes have OSM approved abandoned mine reclamation programs.

B. Proposed Rules

OSM published proposed rules at 58 FR 59334–59342 (November 8, 1993) concerning abandoned mine reclamation grant procedures and requested comments from the public. During the comment period on the proposed rules, OSM received comments from a variety of sources.

Pursuant to Executive Order 12866, every Federal agency is required within applicable statutory limits to select regulatory goals that maximize benefits to society and to select the most effective means to achieve these goals. To this end OSM has received comments and recommendations from the public and representatives of coal mining States/Indian tribes.

All comments received during the comment period were considered in this rulemaking process, and all substantive comments received are addressed in the following preamble. All comments received are available for inspection in the OSM Administrative Record, room 660, 800 North Capitol Street, NW, Washington, D.C. 20001.

C. Overview of Changes to Abandoned Mine Land Grant Regulations

Over the years, Congress has made several amendments to the provisions in Title IV of SMCRA. These amendments have been, or are in the process of being, implemented by OSM. In addition, the Department has adopted the governmentwide Grants Management Common Rule (43 CFR part 12; subpart C). Due to these changes, certain regulatory references are now outdated or refer to statutory provisions that no longer exist. Therefore, in this rulemaking OSM is editing the AML regulations in 30 CFR chapter VII, subchapter R, to ensure that they will be consistent with agency practice and all past amendments to Title IV of SMCRA. The specific changes proposed to the AML rules are set forth below.

II. Final Rules and Disposition of Comments

Part 870–Abandoned Mine Reclamation Fund-Fee Collection and Coal Production Reporting

Section 870.5 is revised to include Indian tribes in the definition of ''agency'' to reflect the OSM has approved Abandoned Mine Reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. See Section 405(k) of Pub. L. No. 100–71, 101 Stat. 416 (1987). No comments were received on this section which is adopted as proposed.

Part 886—State Reclamation Grants

Section 886.1 is revised by adding the term ''Indian tribes'' and deleting specific reference to ''State reclamation plan[s]'' to reflect that OSM has approved abandoned mine reclamation programs for three Indian tribes: the Crow, Hopi, and Navajo. In every instance in this document where Indian tribe has been inserted, the purpose is to add clarity and avoid confusion by reflecting the fact that OSM approval has been extended to Indian tribal programs as well as State programs. See Pub. L. No. 100–71, 101 Stat. 416 (1987). No comments were received on this section which is therefore adopted as proposed.

OSM also amended § 886.3 by making certain editorial changes. Subsection (b) has been deleted and the subsection designation for subsection (a) removed. The word ''allocated'' has also been replaced with ''distributed annually.''

This revision clarifies that AML grant funds as ''distributed'' to States and Indian tribes. The previous use of the word ''allocated'' was, in the context used, inappropriate. Allocation means the administrative identification in the records of OSM of monies in the Fund for a specific purpose, e.g. identification of monies for exclusive use by a State/Indian tribe, whereas ''distribution'' is the process by which OSM makes those monies available to States/Indian tribes after the monies are appropriated from the AML Fund by Congress. Throughout this final rule, editorial changes have been made to clarify this terminology. In addition, the word ''annually'' is added to reflect the current procedure that exists for AML grant distribution. States/Indian tribes with approved AML programs are eligible to submit AML grant requests on an annual basis.

Subsection 886.3(b) has been deleted due to the legislative changes effectuated by the 1990 amendments to Title IV of SMCRA. See the Abandoned Mine Reclamation Act (AMRA) of 1990, Pub. L. 101–508 (November 5, 1990). All funds are now allocated for a specific purpose (see 30 U.S.C. 1232(g)). Accordingly, the reference to 30 CFR § 886.3 concerning ''remaining funds'' is no longer relevant.

No comments concerning this section were received from the public, thus, this section is adopted as proposed.

Section 886.10 addresses information collection requirements and the appropriate OMB clearance number. OSM revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides OSM and OMB addresses were comments regarding the information collection requirements may be sent. No comments were received on this section which is adopted as proposed.

Section 886.11 is amended to reflect that OSM has approved Abandoned Mine Reclamation plans for three Indian tribes: the Crow, Hopi, and Navajo. No comments were received on this section, which is thus adopted as proposed.

Section 886.12(a) is amended by removing the word ''State.'' This amendment would reflect that Tribal programs have been approved by OSM.

Section 886.12(b), which outlines the permissible uses for grant moneys under this part, is amended by revising the subsection to reflect specific changes made by the 1990 amendments to Title IV of SMCRA. See Pub. L. No. 101–508.

Rather than listing certain reclamation objectives, OSM is referencing specific statutory and regulatory provisions that detail eligibility requirements. This change avoids confusion and provides clearer direction for the States/Indian tribes.

One commenter observed that the last sentence of subsection (b) appears to require the use of fuels other than petroleum or natural gas where public facility projects are constructed with abandoned mine land grant funds. This commenter was unclear as to why such a requirement has been included, and further felt that this restriction was inappropriate in the context of these regulations.

OSM responds that this provision stems from Executive Order 12185 which requires, to the extent technologically and economically feasible, that public facilities planned, constructed or modified in whole or part with Federal funds (e.g., abandoned mine land grant funds) should utilize fuel other than petroleum or natural gas. This provision has been in the regulations since 1982. If a State/Indian tribe determines that a public facility project incorporating such provisions is not technologically or economically feasible, then compliance with this requirement would not be required.

Subsection 886.13(a) is revised by deleting any reference to administrative grants as being separated grants in and of themselves. This change reflects the current OSM policy of awarding all AML funds through a single grant. Administrative costs in this grant would no longer require a second grant, but would cover only the first year of the grant.

Two commenters expressed concern on behalf of their members regarding the requirement to begin the 12-month administrative period at the beginning of the grant since it may not coincide with the grantee's fiscal year. The proposed rule would require grantees to shift their construction grant period to coincide with the fiscal year, thereby losing much of the favorable construction season. The commenter suggests that grantees be allowed to assign the 12-month performance period for the administrative portion of a grant to any 12-month period within the first 18 months of a grant. This additional flexibility would allow the grantee's administrative cost period to coincide with it's fiscal year, while the construction portion of a grant can be scheduled to coincide with the construction season.

OSM has not accepted this comment and does not believe that a change to the proposed rule language is required since sufficient flexibility exists under the current system and the proposed rule as evidenced by several States that already have made determinations to adjust their administrative period to coincide with the start of their fiscal year.

Section 886.13(b) is also revised in order to implement changes made by the 1990 amendments to SMCRA. These statutory amendments deleted a reference to ''impact assistance funding'' in Section 402(g) of SMCRA (30 U.S.C. § 1232), and moved these reclamation objectives to the non-coal provisions in new SMCRA Section 411 (30 U.S.C. § 1240(a)). A similar change has been made in these regulations. Additionally, and to avoid confusion, OSM has replaced the specific reference to Sections 403 and 409 (30 U.S.C. §§ 1233 and 1239), of SMCRA with a general reference to SMCRA.

OSM also has deleted paragraphs (b)(2) and (b)(3) of § 886.13 which refer to specific AML projects. Under the revised AML grant procedures, project specific information would be, in part, in Abandoned Mine Land Inventory System and, in part, submitted at the time of project activation. This change will decrease certain administration costs of States/Indian tribes, thereby allowing more AML funds to be used for specific AML reclamation purposes.

Two commenters suggested that open-ended grants be allowed, in lieu of the current 3-year limitation, so as to accommodate longer performance periods.

OSM accepts the comment to provide flexibility in the grant period. This change is being made to accommodate longer performance periods where a need is demonstrated by a State/Indian tribe. Since no grant period is specified in the statute, OSM believes that it has the requisite authority under Subsection 413(a) of SMCRA to alter the current 3-year grant period. OSM acknowledges, however, that longer grant periods may pose certain processing and fiscal problems. Accordingly, OSM is planning to examine this concept, developing proposed specific procedures for an open-ended grant program and testing the procedures by means of selected State programs before making a final policy decision.

The existing § 886.14 includes a reference to Section 405(f) of SMCRA, relating to project information required from applicants. Since § 886.14 is revised to relate solely to budget information, submission of information relating to Section 405(f) now is discussed in the preamble to § 886.16.

Section 886.14 is revised to reflect that OSM will not require annual budget estimates. This clarifies that States/Indian tribes should no longer submit site specific information to OSM as part

of this process. The budget information called for by this revision would provide information that OSM needs to formulate its own budget requests to Congress. In addition, the deletion of the word ''administrative'' is because under the new procedures outlined in this proposed rule, administrative grants would no longer be separate grants. Other changes to this section are editorial in nature and are designed to reflect existing OSM practice and procedure.

Since no comments were received on this section, it is adopted as proposed.

Section 886.15(c) is renumbered as § 886.15(a) and revised by replacing the word ''allocated'' with ''distributed'' in order to clarify that AML funds are ''distributed'' to States/Indian tribes annually. See the discussion above of proposed revisions to § 886.3. In addition, the previous paragraphs (c)(1)–(6), which refer to specific forms, are deleted in favor of a generalized instruction to use approved forms. This change eliminates the need to amend these regulations if there needs to be a change in form requirements, e.g., when a new Federal law is passed.

Section 886.15(a) is renumbered as § 886.15(b) and amended by revising subsection (a) which allows OSM 90 days in which to act upon a grant application. This amendment would require OSM action on a grant application within 60 days of submittal. This change promotes the overall goal of expediting the AML granting process.

In the interests of greater precision and clarification, OSM has also made an editorial change to the redesignated Subsection 886.15(b) which eliminates ''* * * act upon * * *'' and substitutes ''* * * approve or disapprove * * *''. The use of this language is consistent with the wording of subsequent sections.

One commenter stated that the prior § 886.15(a) provides that grants shall be approved by the Director. The commenter pointed out that under the current system, grants are approved by the Field Office Director. The commenter asked whether this regulatory language signals a change from the current practice.

OSM has not changed the regulatory language that provides authority to the Director to approve grants to the States/Indian tribes. OSM points out, however, that the Director has formally delegated this authority to the Field Office level.

Section 886.15(b), which has been redesignated as § 886.15(c), gives OSM 30 days to approve or disapprove a revised application, is revised to allow OSM to treat the revised application as an original. OSM would then have 60 days (under the new § 886.15(b)) to approve or disapprove the application. This change reflects OSM's view that 30 days could be an insufficient amount of time for it to evaluate revised applications. OSM considers 60 days to be a more realistic time frame in which to execute this task.

Several commenters stated that in the prior Subsection 886.15(b), OSM should define what constitutes a minor revision to the grant application. In their view, these minor revisions should not start the 60-day clock for OSM review and approval. In addition, one commenter provided the opinion that the 60-day review and approval process should be shortened to a period of 30 days.

OSM does not agree with these comments. It does not believe that a 30-day period provides sufficient time to review and process grants and agree upon specific details with States/Indian tribes. Accordingly, OSM has not acted upon that part of the comment to reduce the grant processing time period. Furthermore, because of the variation in eligible grant activities and projects, OSM does not believe that the States/Indian tribes would be better served by attempting to further define what is or is not a ''minor revision.'' By trying to list or define items that may or may not occur, one assumes the risk of being over or under inclusive in the class of items described. This ultimately leads to further administrative problems between the States/Indian tribes and OSM. The agency's goal has been and will continue to be to process all grant applications within the 60-day period contemplated by the regulations. Where revisions are required and are submitted accurately and timely by the States/Indian tribes, OSM will attempt in good faith either to meet or take action quicker than the 60-day time period. It must be understood, however, that if there are time delays in obtaining the necessary revisions, it may not be possible in all cases to meet the 60-day period. However, it is a goal that OSM will continue to strive toward.

Section 886.15(d) is revised by inserting the requirement that States/Indian tribes comply with all Federal laws in order to apply for grants under this Part. The deletion of the reference to OSM implementing regulations is merely an editorial change.

Section 886.15(f) is removed because the requirements of this subsection are redundant. Specifically, the information called for in this subsection is also required when States/Indian tribes submit reclamation plans for OSM approval. See 30 CFR 884.13(c)(7).

Section 886.16 is amended to make some editorial and substantive changes. Specifically, § 886.16(a) is revised by deleting reference to Director approval of an agency's grant application. This is an editorial change; the deleted language is superfluous in light of the fact that a ''grant agreement'' is in fact the document that represents approval of the agency's grant application. Therefore, the existence of a grant agreement denotes that OSM has in fact approved the agency's grant application.

Paragraph (3) of § 886.16(a) requires that the grant agreement include project specific amounts. This paragraph is deleted in order to simplify the AML granting process. Specifically, the deletion of paragraph (a)(3) provides that individual projects will no longer be included in the grant agreement. Instead, this information will be submitted to OSM Field Offices on a project-by-project basis before OSM approves the expenditure of funds for individual projects. Current provisions of these regulations (See recordkeeping and reporting requirements discussed in §§ 886.23 and 886.24), combined with the National Environmental Policy Act (NEPA) compliance process discussed in revised Subsection 886.16(d) below, alleviate the need for approval of specific project amounts in the grant agreement.

Paragraph (a)(4) of § 886.16 requires that the grant agreement include allowable transfers of funds. Likewise, paragraph (b) of 886.16 requires Director approval of agency assignment of functions and funds. Paragraph (a)(4) is removed, and paragraph (b) is revised to give the States/Indian tribes more flexibility in administering their AML grant monies. The revision to paragraph (b) would alleviate the need for Director approval prior to assignment by the States/Indian tribes. In the view of OSM, States/Indian tribes are in the best position to dictate which entities are better suited to carry out day-to-day reclamation activities. With OSM approval no longer necessary, paragraph (a)(4) becomes irrelevant and is therefore removed.

Section 886.16(c) is also deleted and paragraph (d) is revised and renumbered as paragraph (c) to reflect changes in the procedures required to effectuate a grant agreement between OSM and a State/Indian tribe. This amendment reflects a change in the technical administration of the grant agreement process. Specifically, this amendment requires that the Director sign and transmit only two copies of the grant agreement to the agency, instead of the four required prior to amendment. In addition, this amendment changes the time period for the agency to execute the grant from 3 weeks to 20 days. For purposes of this

section, the agency is now required to sign the agreement and return it to OSM within the 20-day period. Since the grant, when signed by the Director, would obligate funds, subsection (c) states that failure of the State/Indian tribe to execute the grant within 20 days would result in a deobligation of the total Federal grant amount. Thus, if the signed agreement is not returned to OSM by the close of business on the 20th day after the designated OSM official signs it and OSM has not granted an extension, OSM will initiate deobligation procedures.

Several commenters have stated that OSM should allow liberal extensions of the 20-day period to execute a grant agreement based upon reasonable justification provided by the State/Indian tribe. Otherwise, commenters note, grantees could be faced with automatic premature deobligations simply because they are unable to obtain the appropriate approvals and authorizing signatures within the 20 calendar day period.

OSM has accepted this comment and made a change in the language of § 886.16(c) to provide that an extension of time may be approved verbally or in writing by the individual delegated the authority to sign grant agreements. Specifically, the word ''formally'' has been deleted to allow an oral or other less formal mechanism of approval. OSM notes that the States/Indian tribes are the primary delivery mechanism for the AML program. The actual signing of the grant agreements is not a complex matter; OSM will endeavor to continue to keep it as uncomplicated as possible.

In addition, one commenter has requested that the 20-day period of § 886.16(c) be lengthened to 45 days to allow sufficient time to execute grant agreements.

OSM has declined to extend the 20-day period based upon experience over the past decade that reflects that there has been few if any problems encountered by the involved parties in meeting the specified time period.

New §§ 886.16(d) and 886.16(e) are added to clarify that compliance with NEPA is required before AML grant funds may be used by the State/Indian tribe and that a completed Form OSM–76 must be submitted prior to the use of funds for construction activities. Currently, OSM grant procedure requires NEPA compliance at the construction grant award stage. Since the issuance of a grant need not contain authorization of expenditures for any specific project, that action should not require NEPA compliance. Instead, NEPA compliance is deferred until the State/Indian tribe requests authorization to expend funds under the grant. The actual initiation of each project is the action that might have a significant effect on the environment. Under these procedures, NEPA documentation would be developed as a normal part of project planning rather than up front in a grant application. Although OSM field office approval would still be required before the States/Indian tribes are authorized to proceed with individual projects, OSM believes that the overall management of the grant by the States/Indian tribes is enhanced by this action.

One commenter stated that § 886.16(d) should be revised to clarify that the provisions of the National Environmental Policy Act of 1969 apply to coal AML projects only and not to noncoal projects.

OSM disagrees with this comment. NEPA applies to both coal and noncoal projects. NEPA compliance must occur for every project.

Prior to the time that authorization to expend funds for construction activities is requested, information specific to the project is provided to the OSM field office by the State/Indian tribe. The required information is provided on the Form OSM–76, Abandoned Mine Land Problem Area Description (OMB No. 1029–0081). This information conforms to that required in section 405(f) of SMCRA.

Several commenters asked for clarification on whether the filing of Form OSM–76 with grant applications applies to both coal and noncoal projects. Commenters objected to having to file a Form OSM–76 with noncoal projects.

Although unfunded noncoal problem areas/projects do not have to be included in the AML inventory, if such projects are funded, OSM is required under section 403(c) of SMCRA to establish procedures for, and to track, accomplishments. This is being implemented for all Title IV projects through States/Indian tribes submitting information on Form OSM–76.

It is noted that budgets are ''revised'' and grants are ''amended.'' Because of the method of approving an AML grant, a budget by itself is not required to be revised. Thus, the title of Section 886.17 would be changed from ''Grant and budget revisions'' to read ''Grant amendments.''

Section 886.17 is amended by revising paragraph (a)(1) which refers to OMB Circular A–102. This editorial change properly refers to the Grants Management Common Rule. This editorial change has been made throughout this rule.

Paragraph (a)(2) of § 886.17, which discusses events that trigger notification requirements, is revised by deleting subparagraphs (i) and (ii) and inserting language specifying that notification is necessary for changes that will result in an extension of the grant period, or require additional funds, or make a budget transfer from administrative costs to project costs or vice versa. This revision eliminates the need to notify OSM of project-specific changes, but retains the mandates of the Grants Management Common Rule. This simplifies the grant process; OSM would not require project-by-project approval of State/Indian tribe AML projects at the time of initial grant approval. Thus, a grant amendment would not be necessary merely due to changes in individual projects that do not effect the overall grant period, funding, or cost category.

Several commenters stated that § 886.17(a)(2) should be revised to clarify that budget transfers, from administrative costs to project costs to indirect costs and vice versa, require notification only and do not require a grant amendment.

OSM disagrees with the comments. The Grants Management Common Rule, (43 CFR part 12, subpart C.30(c)(3)), requires that when a grant provides funding for both construction and nonconstruction activities, the grantee must obtain prior written approval from the awarding agency before making any fund or budget transfers from nonconstruction to construction or vice versa. This requirement is being implemented by the grantee formally amending its approved budget.

Likewise, paragraphs (b)(1) and subparagraphs (b)(3) (i)–(iii) of section 886.17, which require OSM approval for budget revisions of $5,000 or 5 percent of the grant amount, except in certain enumerated circumstances, are removed by these amendments. Thus, the requirements in paragraphs (b)(1) and (b)(3) (i)–(iii) of section 886.17 are deleted in favor of the new instructions in revised paragraph 886.17(a)(2). This is a conforming change that is brought about by the Grants Management Common Rule and would codify existing practices.

In addition, paragraph (b)(2) of section 886.17 is revised to allow OSM 30 days, instead of the current 15 days, in which to either approve or disapprove the amendment. Paragraph (b)(2) is redesignated as subsection (b). The proposed 30-day time limit reflects OSM's evaluation of the time needed to complete its review of the amendment.

In regard to paragraph 886.17(b)(2), one commenter stated that they prefer 15 days instead of the specified 30-day

period to approve or disapprove grant amendments.

Based on past experience, OSM is of the opinion that a 30-day period provides a reasonable and sufficient time to review and approve or disapprove a grant amendment. Accordingly, OSM has not acted upon this comment and will endeavor to process all grant amendments as quickly as possible within the 30-day period contemplated by the regulation.

Section 886.18, discussing conditions for grant reduction, suspension, and termination, is amended by revising paragraph (a)(2) to make a minor editorial change to the reference from 30 CFR 872.11(b)(2) to 30 CFR 872.11(b)(1) and 872.11(b)(2). This is a conforming change made necessary by rulemaking to implement the AMRA, Pub. L. 101–508.

In the interest of clarity, OSM has decided to substitute the word ''obligate'' for ''expend'' in paragraph 886.18(a)(2). Paragraph 402(g)(1)(D) of SMCRA uses the term ''expended,'' but the term ''obligate'' is deemed to be a more technically correct financial term to reflect an irrevocable commitment of funds by a grantee.

In regard to paragraph 886.18(a)(2), one commenter observed that if a grantee fails to expend distributed funds within a 3-year grant period, those funds will be expended by the Secretary to accomplish the purposes of Title IV. The commenter disagrees with this section due to annual distribution decreases and anticipated future decreases due to the amendments to SMCRA. The commenter feels that all distributed funds should be utilized only by the respective State/Indian tribe for the purposes of Title IV.

Except for the editorial change previously mentioned, OSM does not believe that any changes should be made to this regulation. Section 402(g)(1)(D) of SMCRA specifically provides for the Secretary to use moneys granted, but not expended, within 3 years after the grant award. Note however, that even though the language of this provision has not been modified, OSM has always been able to work with the States/Indian tribes on expending appropriated funds.

Paragraph (a)(3) of section 886.18 is also revised by specifying that certain Indian tribes may receive reclamation funds without having an approved regulatory program. Under the 1987 amendments to SMCRA, the Crow, Hopi, and Navajo Indian tribes do not have an approved Title V program prior to being eligible to receive AML funds. See 30 U.S.C. 1235(k) (1988).

Subsection 886.18(b) is replaced by a new subsection (b). The new subsection (b) incorporates remedial measures outlined in the Grants Management Common Rule.

Also, the current subsection (b) is revised and redesignated as subsection (c). This new subsection (c) contains editorial changes to indicate that the ''OSM official delegated grant signature authority'' is the person who would give notice of grant reduction, suspension, or termination of a grant. In addition, subsection (c) requires certified mail transmittal of the required written notice. Subsection (c) also adds a new paragraph (7) that would incorporate the concept of mutual termination of a grant as outlined in the Grants Management Common Rule.

Likewise, the current subsection 886.18(c) is redesignated as subsection (d) and revised to clarify that State or Tribal appeals of OSM decisions to reduce, suspend, or terminate a grant are evaluated to the Director of OSM. This rule provides that the Director would have 30 days from receipt to decide the appeal. The Director's decision could then be appealed to the Secretary.

These appeals would be processed in accordance with existing OSM procedures. OSM has elected not to codify the details of this process since the procedures may be amended as necessary.

One commenter stated that, before reduction or termination of a grant, the grantee should be allowed to complete the appeal process provided in Subsection 886.18(d). Hence, paragraph 886.18(c)(2) should be revised to provide for the initiation and completion of the appeals process before any final action is taken to reduce or terminate a grant.

OSM accepts this comment and notes that no regulatory language change is required because the authority to appeal a reduction, suspension or termination of a grant exists in paragraph 886.18(d). Under this paragraph the Director must decide the appeal within 30 days of receipt. Further, a grantee can then appeal the Director's decision to the Secretary who also has 30 days to act upon the appeal.

Section 886.19, which explains requirements for an audit, is revised to remove an outdated reference to OMB Circular A–102.

Two commenters requested further clarification of Section 886.19 by incorporating appropriate reference to specific published Office of Management and Budget guidance.

In order to provide guidance to grantees, OSM has revised section 886.19 to state that the agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget. This revision is being done in a general fashion because the applicable circulars and other guidance documents could be modified and/or combined in the future.

Section 886.20, which outlines administrative procedures for agencies under this Part, is revised by replacing references to OMB Circular A–102 with the Grants Management Common Rule. This change will alleviate the need for rulemaking to effectuate every minor change in form requirements. No comments were received on this section which is adopted as proposed.

Section 886.21, outlining allowable costs, is revised by deleting the work ''project'' in paragraph (a). As discussed throughout this rulemaking, these amendments eliminate certain project specific grant procedures under the AML program. The revision will have little substantive effect since previous grants, although containing project-specific information, were for overall reclamation activities.

One commenter has noted that ''acquisition of land'' is an allowable cost. That commenter has stated that OSM may want to clarify § 886.21(a) to note that acquisition is limited to lands affected by coal and noncoal mining, i.e., does not include public facility projects authorized under Section 411(f) of SMCRA.

OSM has not made any change to § 886.21. This is a general provision that addresses grants as a whole; if specific limitations exist in Title IV of SMCRA, those limitations would have to be complied with as required.

Section 886.22(a) contains some editorial changes in order to properly reference the Grants Management Common Rule. In addition, subsection (d), mandating that drawdowns be made by the agency as closely as possible to the time of making disbursements, is revised by requiring that when advances are appropriate, they should be made as closely as possible to the actual time of disbursement. This change will reflect current practice and procedure. No comments were received on this section which is thus adopted as proposed.

Section 886.23 is amended by replacing the semi annual reporting requirement with an annual reporting requirement. In the view of OSM, annual reporting is sufficient to ensure proper Federal oversight. The AML program has been in effect in most States for over a decade. This change represents the growing maturity of these

programs and the confidence that OSM has in their management.

In order to maintain consistency in the regulatory language, OSM is making a technical change and thereby deleting reference to ''cooperative agreements'' in § 886.23. The term ''grant'' as used in this regulation includes financial assistance in the form of grants and/or cooperative agreements.

Several commenters stated their support of the OSM proposal in § 886.23(a) to change the reporting requirements to an annual cycle rather than semi annual.

OSM agrees with the commenters that this change will assist in reducing administrative burdens on grantees and recognizes the superior performance of the States/Indian tribes in administering their AML programs over the years.

In addition, existing paragraph (a) and (b) are revised by deleting references to specific form requirements. This is accomplished by deleting a portion of paragraph (a), all of paragraphs (a)(1)–(2), and all of paragraph (b). In place of these references to specific forms, this amendment directs agencies to submit reporting forms specified by OSM. This change eliminates the need for rulemaking procedures to amend these regulations in every instance when form requirements change. In addition, many of the forms required by this section anticipate the need for project-specific information. In light of the changes that are made by these amendments, specific information no longer needs to be submitted to OSM in advance. Some project-specific information would be provided to OSM at the time a grantee requests approval for expenditures of funds for individual projects. Additional detailed information would also be available in the grantee's files.

A revised paragraph (b) is added to § 886.23 which requires, at the completion of a grant, agency submission of closeout reports as specified by OSM. Specifically, subsection (b) requires submission of Form OSM–76 upon project completion. This submission is necessary to comply with the requirement in section 403(c) of SMCRA that on a regular basis OSM note on its inventory those projects completed under Title IV.

Section 886.23(c) is deleted, since the requirement to submit Form OSM–76 upon project completion is now contained in revised subsection (b), as noted above.

Several commenters observed that § 886.23(b) states that a completed Form OSM–76 shall be submitted upon project completion, not grant expiration. Because of the 3-year limitation for construction grants and the fact that many projects may not begin until the end of the first construction season due to fiscal year constraints, some projects may require funding from more than one grant. Consequently, some projects may not be completed when grant closeout reports are due, and a Form OSM–76 sent at that time would be incomplete. Because of this situation, the commenters suggest that OSM needs to define ''project completion'' within the framework of this section.

OSM agrees in part. However, the term ''project completion'' refers to when the actual construction/reclamation work is completed. This could involve more than one grant; likewise, it means that if the reclamation is completed at a site after one year of the grant, the Form OSM–76 is due at that time. This is necessary to fulfill the mandate of Section 403(c) requiring that the inventory be updated annually with all completed projects.

Section 886.24 is amended by revising subsection (a) which requires agencies to keep records in accordance with OMB Circular A–102. OSM is revising this subsection to properly reference the Grants Management Common Rule, which supersedes Circular A–102 for purposes of this Part.

Section 886.24(b), which mandates certain recordkeeping requirements for subgrantees and contractors, is deleted. Designation of subsection (a) is removed and paragraph (1) and (2) are redesignated as subsections (a) and (b) respectively. In OSM's judgment, the information called for by this subsection would be redundant in light of the requirements of the Grants Management Common Rule.

No comments were received on this section. This section is being adopted as proposed.

OSM adds a new § 886.25 to simplify the existing regulation by including special Indian land procedures (formerly part 888) in part 886.

New § 886.25(a) discusses the Director's authority to mitigate emergencies or extreme dangers resulting from past coal mining practices and to perform other reclamation on Indian lands not subject to an approved reclamation program.

New § 886.25(b) is a conforming change that would incorporate the language of deleted subsection 888.11(a).

New § 886.25(c) is a conforming change that would incorporate the language of deleted subsection 888.11(b).

New § 886.25(d) is a conforming change that would incorporate the language of deleted subsection 888.11(c).

New § 886.25(e) is a conforming change that would incorporate the language of deleted subsection 888.11(d).

No comments were received on this section, which is therefore adopted as proposed.

Part 887—Subsidence Insurance Program Grants

Section 887.3 discusses the Director's authority to approve or disapprove grants for subsidence insurance up to a total of $3 million in States with approved reclamation plans. The reference to section 402(g)(2) of SMCRA is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph.

Section 887.10 deals with information collection requirements and their submission to OMB for approval. The collection of this information will not be required until it has been approved by OMB. OSM has revised and amended this section by updating the data contained in the section and including the estimated reporting burden per response for complying with the information collection requirements. The revision also provides the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 887.11 discusses eligibility for subsidence insurance program grants under this Part. This section is revised by making minor editorial changes. The reference to § 872.11(b)(2) is changed to a more general reference to § 872.11(b) in order to reference some explanatory language found in that paragraph. In addition, the reference to SMCRA section 402(g)(2) is revised to properly reference section 402(g)(1) in light of the 1990 amendments to SMCRA.

Section 887.12 is amended by replacing all references to OMB Circular A–102 with references to the Grants Management Common Rule. As discussed above, this change reflects the fact that the Grants Management Common Rule supersedes OMB Circular A–102 for the purposes of this Part.

In addition, § 887.12(b), which specifies the contents of a grant application under this Part, is revised by adding a reference to the procedures of 30 CFR part 886. This amendment advances the goal of simplifying the AML grants process by providing a uniform set of procedures for the grant application process. The effect of this amendment is to combine the process of applying for reclamation grants under

part 886 and for subsidence insurance program grants under this Part.

Section 887.13 is amended by replacing reference to OMB Circular A–102 with reference to the Grants Management Common Rule. As discussed above, this change is made throughout these amendments.

No comments were received in regard to any of the above sections contained in part 887, hence these sections are adopted as proposed.

Part 888—Indian Reclamation Programs

OSM deletes part 888 and incorporates its provisions into new section 886.25. *See the discussion of proposed revisions of section 886.25 above.* No comments were received concerning this deletion.

III. Procedural Matters

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029–0059, 1029–0090, and 1029–0107.

Author

The principal author of this rule is Norman J. Hess, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202–208–2949.

Executive Order 12866

This rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities.

National Environmental Policy Act

OSM has prepared a final environmental assessment (EA) of this rule, and has made a finding that this rule will not significantly affect the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A finding of no significant impact (FONSI), has been approved for this final rule in accordance with OSM procedures under NEPA. The EA and FONSI are on file in the OSM Administrative Record, room 660, 800 N. Capitol Street NW., Washington, DC.

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of Section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule specifies procedures for the Federal grants program under Title IV of SMCRA. This rule is not intended to preempt State law except that to the extent States wish to participate in the program, they must comply with the Federal rules.

B. What is the effect on existing Federal law or regulations, if any, including all provisions repealed or modified?

This rule modifies the AML grant process regulations pursuant to SMCRA as described herein, and is not intended to modify the rules or provisions of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under Section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of this rule, however, administrative procedures must be exhausted.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statues that explicitly define those items?

Terms that are important to the understanding of this rule are set forth in 30 CFR 870.5 and 887.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

List of Subjects

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 886

Grant programs—natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 887

Grant programs—natural resources, Insurance, Surface mining, Underground mining.

30 CFR Part 888

Indian land, Surface mining, Underground mining.

Dated: January 18, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

Accordingly, 30 CFR parts 870, 886, 887, and 888 are amended as set forth below:

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORT

1. The authority citation for part 870 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

2. Section 870.5 is amended by revising the definition of ''Agency'' to read as follows:

§ 870.5 Definitions

* * * * *

Agency means the State agency designated by the Governor, or in the case of Indian tribes, the Tribal agency designated by the equivalent head of an Indian tribe, to administer the State/Indian tribe reclamation program and to receive and administer grants under this part.

* * * * *

3. The heading of part 886 is revised to read as follows:

PART 886—STATE AND TRIBAL RECLAMATION GRANTS

4. The authority citation for part 886 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

5. Section 886.1 is revised to read as follows:

§ 886.1 Scope.

This part sets forth procedures for grants to States/Indian tribes having an approved plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's ''Final Guidelines for Reclamation Programs and Projects'' (45 FR 14810–14819, March 6, 1980) should be used as applicable.

6. Section 886.3 is revised to read as follows:

§ 886.3 Authority.

The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress. Such moneys are distributed annually to the States/Indian tribes.

7. Section 886.10 is revised to read as follows:

§ 886.10 Information collection.

The collections of information contained in 30 CFR part 886 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0059. The information will be collected to meet the requirements of Section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with the Grants Management Common Rule (43 CFR part 12, subpart C) and sound principles of grants management. The obligation to respond is required to obtain a benefit in accordance with Pub. L. 95–87. Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0059), Washington D.C. 20503.

8. Section 886.11 is revised to read as follows:

§ 886.11 Eligibility for grants.

A State/Indian tribe is eligible for grants under this part if it has a reclamation plan approved under part 884 of this chapter.

9. Section 886.12 is amended by revising paragraphs (a) and (b) to read as follows:

§ 886.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this Part to administer the approved reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87.

(b) Grants shall be approved for reclamation and eligible lands and water in accordance with 30 U.S.C. 1234 and 1241 and 30 CFR 874.12, 875.12, and 875.14, and in accordance with the priorities stated in 30 U.S.C. 1233 and 1241 and 30 CFR 874.13 and 875.15. To the extent technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should use fuel other than petroleum or natural gas.

* * * * *

10. Section 886.13 is revised to read as follows:

§ 886.13 Grant period.

(a) The period for administrative costs of the authorized agency should not exceed the first year of the grant.

(b) The Director shall approve a grant period on the basis of the information contained in the grant application showing that projects to be funded will fulfill the objectives of 30 U.S.C. 1201 *et seq.*

11. Section 886.14 is revised to read as follows:

§ 886.14 Annual submission of budget information.

The agency shall cooperate with OSM in the development of information for use by the Director in the preparation of his/her requests for appropriation of moneys for reclamation grants. OSM shall determine the schedule for submitting this information on an annual basis. Funds required to prepare this submission may be included in the grants under 30 CFR 886.12.

12. Section 886.15 is amended by revising and redesignating paragraph (a) as (b); by revising and redesignating paragraph (b) as (c); by revising and redesignating paragraph (c) as (a); by revising paragraph (d); and by removing paragraph (f) to read as follows:

§ 886.15 Grant application procedures.

(a) An agency shall use application forms and procedures specified by OSM. A preapplication is not required if the total of the grant requested is within the amounts distributed to the State/Indian tribe annually by the Director based on the Congressional appropriation.

(b) OSM shall approve or disapprove a grant application within 60 days of receipt. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(c) If the application is not approved, OSM shall inform the agency in writing of the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall process the revised application as an original application.

(d) The agency shall agree to perform the grant in accordance with the Act, applicable Federal laws and regulations, and applicable OMB and Treasury Circulars.

* * * * *

13. Section 886.16 is amended by revising paragraphs (a) and (b); by removing paragraph (c); by redesignating paragraph (d) as (c); by revising redesignated paragraph (c); by redesignating paragraph (e) as (f); and by adding new paragraphs (d) and (e) to read as follows:

§ 886.16 Grant agreements.

(a) OSM shall prepare a grant agreement that includes:

(1) A statement of the work to be covered by the grant; and

(2) A statement of the approvals of specific actions required under this subchapter or the conditions to be met before approvals can be given if moneys are included in the grant for these actions.

(b) The State/Indian tribe may assign functions and funds to other Federal, State, or local agencies. The grantee

agency shall retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall sign two copies of the agreement and transmit them either by certified mail, return receipt requested, or by hand delivery, to the agency for countersignature. The grant constitutes an obligation of Federal funds at the time the Director signs the agreement. The agency shall have 20 calendar days from the date of the Director's signature to execute the agreement in order to accept its terms and conditions. Unless an extension of time is approved by the Director, failure to execute the agreement within 20 calendar days shall result in an immediate deobligation of the total Federal grant amount.

(d) Although the funds are obligated when the Director signs the agreement, for any expenditure requiring compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), funds may not be used by the State/Indian tribe until all actions necessary to ensure compliance with NEPA are taken.

(e) The agency shall submit a completed Form OSM–76 (Abandoned Mine Land Reclamation Problem Area Description) showing proposed funding for any planned non-emergency project work to the applicable OSM field office before it may use funds for construction activities.

* * * * *

14. Section 886.17 is revised to read as follows:

§ 886.17 Grant amendments.

(a) Grant amendments. (1) A grant amendment is a written alteration of the terms or conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for grant amendments shall conform to those in 43 CFR part 12, subpart C.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes that may require a grant amendment. The agency shall notify the Director in advance of changes that will result in an extension of the grant period or require additional funds, or when the agency plans to make a budget transfer from administrative costs to project costs or vice versa.

(b) OSM shall either approve or disapprove the amendment within 30 days of its receipt.

15. Section 886.18 is amended by revising paragraphs (a)(2) and (a)(3); by redesignating paragraphs (b) and (c) as paragraphs (c) as (d) respectively; by adding a new paragraph (b); and by revising the newly redesignated paragraphs (c) and (d) to read as follows:

§ 886.18 Grant reduction, suspension, and termination.

(a) * * *

(2) If an agency fails to obligate moneys distributed and granted within three years from the date of grant award, or within an extension granted under § 886.13 or § 886.17, OSM may reduce the grant in accordance with § 872.11 (b)(1) and (b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under part 735 of this chapter is terminated, OSM shall terminate the grant awarded under this part. This paragraph does not apply to Indian tribes who receive reclamation funds without having an approved regulatory program.

* * * * *

(b) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance in a State plan or application, a notice of award, or elsewhere, OSM may take one or more the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(4) Withhold further grant awards for the program; or

(5) Take other remedies that may be legally available.

(c) *Grant reduction, suspension, and termination procedures.* (1) The OSM official delegated grant signature authority shall give the agency at least 30 days written notice of intent to reduce, suspend, or terminate a grant. OSM must send this notice by certified mail, return receipt requested. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action before reducing or terminating a grant.

(3) The OSM official delegated grant signature authority shall notify the agency of the termination, suspension, or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, the agency shall retain any portion of the grant that is required to meet contractual commitments made before the effective date of termination.

(5) Upon receiving notification of OSM's intent to terminate the grant, the agency shall not make any new commitments without OSM's approval.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A–87.

(7) Either OSM or the agency may terminate or reduce a grant if both parties agree that continuing the program would not produce beneficial results commensurate with the further expenditure of funds. Such a termination for convenience shall be handled as an amendment and shall be signed by the OSM official delegated grant signature authority.

(d) *Appeals.* (1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Director.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Director shall decide the appeal within 30 days of receipt.

(2) Within 30 days of the Director's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(i) The agency shall include in the appeal a statement of the decision being appealed and the facts that the agency believes justify a reversal or modification of the decision.

(ii) The Secretary shall act upon the appeal within 30 days of receipt.

16. Section 886.19 is revised to read as follows:

§ 886.19 Audit.

The agency shall arrange for an independent audit pursuant to guidance provided by the General Accounting Office and the Office of Management and Budget.

17. Section 886.20 is revised to read as follows:

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in 43 CFR part 12, subpart C and use the property form specified by OSM and

approved by the Office of Management and Budget.

18. Section 886.21 is amended by revising paragraph (a) to read as follows:

§ 886.21 Allowable costs.

(a) Allowable reclamation costs include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of the acquisition of land.

* * * * *

19. Section 886.22 is amended by revising paragraphs (a) and (d) to read as follows:

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of 43 CFR part 12, subpart C. Accounting for grant funds must be accurate and current.

* * * * *

(d) When advances are made, they should be made as closely as possible to the actual time of the disbursement.

* * * * *

20. Section 886.23 is revised to read as follows:

§ 886.23 Reports.

(a) For each grant, the agency shall annually submit to OSM reporting forms specified by OSM.

(b) At the completion of each grant, the agency shall submit a completed Form OSM–76 and any other closeout reports specified by OSM.

21. Section 886.24 is amended by revising paragraph (a) and deleting its designation as (a); revising paragraph (a)(1) and redesignating as (a); redesignating paragraph (a)(2) as (b); and by removing the existing paragraph (b) to read as follows:

§ 886.24 Records.

The agency shall maintain complete records in accordance with 43 CFR part 12, subpart C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(a) The amount and disposition of all assistance received for the program; and

(b) * * *

22. Section 886.25 is added to read as follows:

§ 886.25 Special Indian lands procedures.

(a) This section applies to Indian lands not subject to an approved Tribal reclamation program. The Director is authorized to mitigate emergency situations or extreme danger situations arising from past mining practices and begin reclamation of other areas determined to have high priority on such lands.

(b) The Director is authorized to receive proposals from Indian tribes for projects that should be carried out on Indian lands subject to this Section and to carry out these projects under parts 872 through 882 of this chapter.

(c) For reclamation activities carried out under this section on Indian lands, the Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian lands.

(d) If a proposal is made by an Indian tribe and approved by the Director, the Tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under § 872.11(b)(5).

(e) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

23. The authority citation for part 887 is revised to read as follows:

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

24. Section 887.3 is revised to read as follows:

§ 887.3 Authority.

The Director is authorized to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b) of this chapter and Section 402(g)(1) of Pub. L. 95–87 (30 U.S.C. 1232).

25. Section 887.10 is revised to read as follows:

§ 887.10 Information collection.

The collections of information contained in 30 CFR part 887 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1029–0107. The information will be used to grant funds to State regulatory authorities and Indian tribes to administer their subsidence insurance program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this information is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Room 640 NC, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0107), Washington, D.C. 20503.

26. Section 887.11 is revised to read as follows:

§ 887.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under part 884 of this chapter and if it has funds available under § 872.11(b) of this chapter and Section 402(g)(1) of SMCRA, as amended, 30 U.S.C. 1232.

27. Section 887.12 is amended by revising paragraph (a), the introductory sentence of paragraph (b), and paragraph (e) to read as follows:

§ 887.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with the Grants Management Common Rule (43 CFR part 12, subpart C).

(b) The grant application shall be submitted under the procedures of 30 CFR part 886 and contain the following:

* * * * *

(e) Insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with 43 CFR part 12, subpart C.

28. Section 887.13 is revised to read as follows:

§ 887.13 Grant period.

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to the 43 CFR part 12, subpart C.

PART 888—[REMOVED]

29. Part 888 is removed.

[FR Doc. 95–4259 Filed 2–21–95; 8:45 am]
BILLING CODE 4310–05–M

Federal Register

Wednesday
February 22, 1995

Part IV

Department of Labor

Mine Safety and Health Administration

Program Policy Letters: Public Input in Development and Withdrawals; First Aid Training for Selected Supervisors; and Examination of Working Places; Notices

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Public Input in Development of Program Policy Letters; Withdrawal of Program Policy Letters

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is inaugurating a process to voluntarily solicit public comment on certain draft policy statements before the statements are final. MSHA also announces the withdrawal of the following Program Policy Letters (PPL): PPL No. P94–IV–2, First Aid Training For Selected Supervisors; PPL No. P94–IV–4, Ventilation Plan; and PPL No. P94–IV–5, Examination of Working Places.

FOR FURTHER INFORMATION CONTACT: Marvin Nichols, Administrator for Coal Mine Safety and Health, 703–235–9423, or Vernon Gomez, Administrator for Metal and Nonmetal Mine Safety and Health, 703–235–1565.

SUPPLEMENTARY INFORMATION:

Public Input in Program Policy Letters

MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters. These Program Policy Letters are not regulations and impose no new regulatory requirements. The Program Policy Letters are Agency interpretations of what existing MSHA regulations require and explain how regulations work or apply. Program Policy Letters are used by MSHA and the mining community, including mine operators, miners, and equipment manufacturers, as guidance in determining how best to comply with MSHA safety and health regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution both within the Agency and in the public.

The mining community has expressed concerns about MSHA's process for interpreting mandatory standards. MSHA believes that compliance may be improved if the interested public has the opportunity to provide input and so participate in the development of policy.

Accordingly, MSHA is announcing a new process to voluntarily solicit public comment on certain draft Program Policy Letters. MSHA will publish a Notice in the **Federal Register** explaining the need for the draft policy statement and requesting public comment on the designated draft policy. The public will have a reasonable period of time to comment. This period of time will allow persons time to formulate comments without impeding timely issuance of the policy statement. MSHA also will make efforts to notify interested persons such as company safety directors and miners' representatives directly. This will further assure that those individuals have the opportunity to comment on issues of immediate concern to them and provide MSHA useful feedback from the mining community at large. MSHA will also experiment with other methods of encouraging input from affected miners and operators including public meetings in the mining communities and use of local media outlets. MSHA will consider the public comments before taking final action on the policy statement.

MSHA emphasizes that it is not legally required to submit its draft policy statements for public comment. The Agency has determined as a matter of discretion that public participation in the policy setting process may be beneficial as discussed above. The Agency will select the new or revised Program Policy Letters that it considers appropriate for public comment. Policies which respond to safety and health emergencies or pertain to routine, non-controversial matters will not be considered for public comment. This new process is subject to change by the Agency as experience and circumstances dictate. This policy making process is not rulemaking; therefore, Agency decisions made pursuant to this process are not subject to judicial review under section 101(d) of the Federal Mine Safety and Health Act of 1977. When enforcement actions are taken consistent with a Program Policy Letter they are subject to review by the independent Federal Mine Safety and Health Review Commission.

Withdrawal of Program Policy Letters

In initiating the new process for public input to Program Policy Letters, MSHA is withdrawing three recent Program Policy Letters. These Program Policy Letters are PPL No. P94–IV–2 (30 CFR 56/57.18010—First Aid Training For Selected Supervisors), PPL No. P94–IV–4 (30 CFR 57.8520—Ventilation Plan), and PPL No. P94–IV–5 (30 CFR 56/57.18002—Examination of Working Places).

Two of those Program Policy Letters (First Aid Training for Selected Supervisors and Examination of Working Places) are the subject of notices soliciting public comment elsewhere in this edition of the **Federal Register**.

Dated: February 16, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4340 Filed 2–16–95; 4:31 pm]

BILLING CODE 4510–43–M

First Aid Training for Selected Supervisors

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is voluntarily requesting comments on a draft Program Policy Letter concerning first aid training for selected supervisors which is required by 30 CFR 56/57.18010.

DATES: Written comments must be submitted on or before April 10, 1995.

ADDRESSES: Send written comments to Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, Virginia 22203, Fax: 703–235–9173. Commenters are encouraged to send commends on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Richard H. Judd, Mine Safety and Health Specialist, Metal and Nonmetal Mine Safety and Health, 703–235–8480.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPSs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution.

To increase public participation on selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is requesting comments on a draft PPL concerning first aid training for selected supervisors, as required by 30 CFR 56/57.18010. These standards were first promulgated as advisory standards in July 1969 and became

mandatory in August 1973. MSHA will consider all timely submitted comments before taking final action on the PPL.

Draft Policy

Background

Standard 56/57.18010, First Aid Training, states, ''Selected supervisors shall be trained in first aid. First aid training shall be made available to all interested employees.''

The intent of the standard is to provide first aid capability at each mine so that timely and appropriate treatment may be given in the event a miner is injured. Questions raised by industry and labor indicate that compliance and enforcement guidance is needed to clarify the requirements of the regulation. In a recent five year period, more than 2,200 violations of the standard have been cited. Many of these citations were issued under circumstances where no one at the mine site had been given first aid training. Therefore, MSHA is considering issuing a PPL on this subject. It is MSHA's policy that a sufficient number of supervisors must be selected and trained to ensure that a responsible person is available to administer first aid at the mine site on all working shifts.

Selected Supervisors To Be Trained

Selected supervisors can include shift bosses, foremen, superintendents, or other designated individuals in a supervisory position. In order to provide first aid assistance to sick or injured employees, trained supervisors should be selected to provide coverage on each working shift.

Course Content

The word ''trained'' refers to a performance capability. A person trained in first aid must be able to provide the necessary level of treatment consistent with accepted first aid practices. The first aid course for supervisors, therefore, should include, at a minimum, the following fundamental topics which are consistent with those of nationally recognized courses: patient assessment, artificial ventilation, control of bleeding, control of shock, wounds and dressings, burns and scalds, musculoskeletal injuries, and handling and transportation.

Accepted Courses

Training courses which include the fundamentals identified above, and are sponsored or sanctioned by a recognized organization (American Red Cross, National Safety Council, etc.) meet the requirements of 30 CFR 56/57.18010. First aid training conducted by MSHA-certified instructors also meets the requirements of the standard, provided that the topics, as detailed above, are included in the course. 30 CFR Part 48 training requirements address only a limited form of first aid training for all miners and, therefore, is unacceptable for compliance with 30 CFR 56/57.18010.

A certificate of course completion provided by the trainer or the recognized training organization, or a written statement by the mine operator certifying course completion, will serve as evidence to MSHA of current training.

Refresher Training

In order for first aid capability to remain effective, it is necessary for persons who have received the training to maintain an adequate competency level and, thus, remain ''trained.'' Refresher training prevents the loss or diminution of competency over a period of time. When a recognized course is used to comply with the standard, retraining should be conducted within the recommended frequency and course content established by the providing organization.

Availability Of Training For Employees

Availability of training for interested employees may be announced by posting the course schedule on the mine bulletin board, or by notifying employees through other means. The course should be given at a location and time convenient to employees.

Dated: February 16, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4342 Filed 2–16–95; 4:31 pm]

BILLING CODE 4510–43–M

Examination of Working Places

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) is voluntarily requesting comments on a draft Program Policy Letter concerning examination of working places which is required by 30 CFR 56/57.18002.

DATES: Written comments must be submitted on or before April 1, 1995.

ADDRESSES: Send written comments to Administrator, Metal and Nonmetal Mine Safety and Health, 4015 Wilson Boulevard, Room 728, Arlington, Virginia 22203, Fax: 703–235–9173. Commenters are encouraged to send comments on a computer disk along with their original comments in hard copy.

FOR FURTHER INFORMATION CONTACT: Roderick Breland, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, 703–235–8480.

SUPPLEMENTARY INFORMATION: MSHA updates its policies for enforcement of safety and health regulations through Program Policy Letters (PPLs). These PPLs are Agency interpretations of what existing MSHA regulations require; they are not new regulations. Therefore, PPLs do not impose new requirements, but explain or clarify how regulations work or apply in a particular situation. These PPLs are used by MSHA inspectors, miners, mine operators, and mining equipment manufacturers as guidance in determining how best to comply with MSHA regulations. Once adopted, the policy statements are published in the MSHA program policy manual and given wide distribution.

To increase public participation on selected draft PPLs, MSHA is voluntarily requesting comments and suggestions from the public, especially from people who would be directly affected by the PPLs. By this notice, MSHA is requesting comments on a draft PPL concerning examination of working places, as required by 30 CFR 56/57.18002. These safety standards were first promulgated as advisory standards in July 1969 and became mandatory in August 1979. MSHA will consider all timely submitted comments before taking final action on the PPL.

Draft Policy

Background

Standard 56/57.18002, Examination of Working Places, contains the following requirements:

(a) A competent person designated by the operator shall examine each working place at least once each shift for conditions which may adversely affect safety or health. The operator shall promptly initiate appropriate action to correct such conditions.

(b) A record that such examinations were conducted shall be kept by the operator for a period of one year, and shall be made available for review by the Secretary or his authorized representative.

(c) In addition, conditions that may present an imminent danger which are noted by the person conducting the examination shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

The intent of the standard is to require regular close examination of the total mining environment to find and eliminate potential hazards caused by

unsafe conditions and practices that may be present. However, in a 5-year period, MSHA has investigated 17 serious and fatal accidents where working place examinations were not conducted or were inadequately conducted. In a significant number of these accidents, failure to conduct working place examinations was a contributing cause. Therefore, rigorous working place examinations are a fundamental accident prevention tool for the mining industry. The Federal Mine Safety and Health Act of 1977 (Mine Act) holds mine operators responsible for preventing the existence of unsafe conditions and practices and the correction of hazards before miners are exposed to them. MSHA is revising its policy concerning 30 CFR 56/57.18002 to better assure that operators conduct rigorous working place examinations.

Recordkeeping

The standard requires a record that working place examinations were conducted. Those records are required to be retained by the mine operator for one year, and made available to the Secretary of Labor or his authorized representative. MSHA has accepted annual certification of work place examinations as an alternative to the standard's recordkeeping requirement, when such certification is made available at the time of an inspection. However, given the serious and fatal accidents that have occurred, annual certification of work place examinations will no longer be accepted for compliance.

To be effective, work place examinations must be timely, made by a competent person, made in the areas where miners work, and hazardous conditions must be promptly corrected. Therefore, for an operator to be in compliance, each working place examination record must include information essential and necessary to accomplish the intent of the standard: (1) the date and time the examination was made; (2) by whom the examination was made; (3) the area(s) examined; and (4) any hazardous conditions found. These records would need to be made available upon request to the Secretary's authorized representative.

Competent Person

A ''competent person,'' according to 30 CFR 56/57.2, is ''* * * a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.'' This definition includes any person who is fully qualified to perform the assigned task. Examinations may be made by a mine foreman, a mine superintendent, another person associated with mine management, or a miner, provided the person is fully qualified to perform the task. Fully qualified means having had adequate experience in the task or having been trained in the recognition of hazards in the working place.

Working Place

The phrase ''working place'' is defined in 30 CFR 56/57.2 as ''* * * any place in or about a mine where work is being performed.'' As used in the standard, the phrase applies to those locations in a mine or mill where persons work during a shift in the mining or milling processes. The working place for an individual assigned to perform maintenance or repair duties, for example, is the area where the individual performs the maintenance or repair work. For an operator to be in compliance, that area would need to be examined by a competent individual for hazardous conditions and any hazardous conditions would need to be promptly corrected. A hazardous condition is any condition or practice which poses a risk of harm to a miner or could result in a violation of a mandatory health or safety standard.

Standard 56/57.18002 does not apply to access or other roads not directly involved in the mining process, administrative office building, parking lots, lunchrooms, toilet facilities, or inactive storage areas. Isolated, abandoned, or idle areas of mines or mills need not be examined, unless persons perform work in these areas during the shift.

Frequency of Examination

The standard requires working place examinations to be performed ''at least once each shift.'' Although the standard permits the examination to be made at any time during the shift, MSHA strongly recommends in keeping with the remedial intent of the Mine Act and the standard that this examination be conducted before work begins on a shift or before work is performed in an area. To be in compliance with the standard, the mine operator must promptly initiate the correction of any hazardous conditions that are found. If an imminent danger is found during an examination, the operator must also withdraw all persons from the affected area except those necessary for the correction of the condition.

Dated: February 16, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–4341 Filed 2–16–95; 4:31 pm]

BILLING CODE 4510–43–M

Federal Register

Wednesday
February 22, 1995

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 51

Grade Standards: Florida Grapefruit, Oranges, Tangelos, and Tangerines; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 51

[Docket Number FV–93–301]

Florida Grapefruit, Florida Oranges and Tangelos, and, Florida Tangerines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would revise the United States Standards for Grades of Florida Grapefruit, United States Standards for Grades of Florida Oranges and Tangelos, and, United States Standards for Grades of Florida Tangerines. The recommended revisions would: Redefine terms to more clearly reflect current cultural and marketing practices; add and revise the grades so as to make them uniform and consistent with each other and other recently revised U.S. grade standards; revise the existing tolerances and the application of tolerances from allowing specific numbers of defective fruit to percentages of defective fruit; revise the size sections to give industry greater flexibility in marketing and packaging new varieties of fruit; and, delete references to a visual aid which is no longer available. The Agricultural Marketing Service (AMS), in cooperation with industry, and other interested parties develops and improves standards of quality, condition, quantity, grade and packaging in order to facilitate commerce by providing buyers, sellers, and quality assurance personnel uniform language and criteria for describing various levels of quality and condition as valued in the marketplace.

DATES: Comments must be postmarked or courier dated on or before April 24, 1995.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720–2185.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture is issuing this proposed rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Florida Grapefruit, the United States Standards for Grades of Florida Oranges and Tangelos, and the United States Standards for Grades of Florida Tangerines were last revised in December 1980. The Florida Citrus Packers (FCP), which represents the majority of citrus growers and packers in Florida, have requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The FCP contends that due to new improved varieties, that changes to the current standards are necessary.

The main purpose of the proposal is set forth in order to bring the standards into conformity with current harvesting and marketing practices. In addition, the standards have been reviewed for need, clarity, and effectiveness as part of a periodic review. Accordingly, we propose to amend the regulations as discussed below.

Presently, in the U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines, the U.S Fancy, U.S. No. 1, and U.S. No. 2 grades are required to be ''free from'' bruises, and the U.S. No. 3 grade is required to be ''free from very serious damage.'' ''Free from'' being any amount of bruising would be scored against the U.S. Fancy, U.S. No. 1 and U.S. No. 2 grades. However, it would have to be ''free from very serious damage'' to be scored against the U.S. No. 3 grade. There currently is no definition of very serious damage by bruising in the standards, and this may create confusion in the marketplace. Therefore, it is proposed to delete ''free from'' bruises and add ''free from injury,'' ''free from damage,'' and, ''free from serious damage'' to the U.S. Fancy, U.S. No. 1 and U.S. No. 2 grades, respectively (''free from very serious damage'' will remain as it is currently in the U.S. No. 3 grade). The terms will be defined in the ''classification of defects'' section. The definitions for injury, damage, and serious damage by bruising are the same due to the severity of the defect, thereby, bruising will be scored as serious damage when ''segment walls are collapsed, or rag is ruptured and juice sacs are ruptured,'' and scored as very serious damage when ''fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than 3/4 inch at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.''

Currently, in the U.S. Standards for Grades of Florida Grapefruit, and U.S. Standards for Grades of Florida Oranges and Tangelos, the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. No. 3 grades are required to be ''free from cuts not healed.'' It is proposed to delete this requirement, and add the requirement ''free from unhealed skin breaks'' to the above grades. This will encompass all types of fresh skin breaks no matter what the cause, and will create uniformity among the three standards.

It is proposed to delete the ''growth crack'' requirements from the U.S. Fancy, U.S. No. 1, U.S. No. 2, and U.S. No. 3 grades of Florida Grapefruit, and Florida Oranges and Tangelos. Any unhealed growth crack would be treated as an ''unhealed skin break,'' and any amount would be scored. Healed growth cracks would be considered as a ''scar'' and scored based on the scar definitions in the ''classification of defects'' section.

This will also create more uniformity among the three standards.

The U.S. No. 1 Bright, U.S. No. 1 Golden, and, U.S. No. 2 Bright grades were added to the U.S. Standards for Grades of Florida Tangerines in order to give industry more flexibility in the marketing of tangerines and to create uniformity (the other standards already have these grades included).

All of the grades in the U.S. Standards for Grades of Florida Grapefruit, U.S. Standards for Grades of Florida Oranges and Tangelos, and U.S. Standards for Grades of Florida Tangerines were put in the same order for the purposes of uniformity and ease of use. Also, grades which previously referenced ''Tables'' for the allowable number of defective fruit would be changed to percentages.

Currently, in the U.S. No. 1 Bronze grades there is a requirement that ''all fruit must show some discoloration.'' In application, this means, that if one fruit did not have any discoloration on it at all, the whole load and/or lot would not meet a U.S. No. 1 Bronze grade. This requirement is too restrictive because one fruit with no discoloration puts a load and/or lot of citrus out of grade. Therefore, it is proposed that ''all fruit must show some discoloration'' be deleted from the requirements of U.S. No. 1 Bronze grades. However, at least 30 percent of the fruit shall have one-third of its surface affected by discoloration, predominately rust mite type, is still part of the requirements for a U.S. No. 1 Bronze grade.

The definition of ''poorly colored'' was moved from the requirements of the U.S. No. 3 grade in the U.S. Standards for Grades of Florida Grapefruit, and U.S. Standards for Grades of Florida Oranges and Tangelos to the ''definition'' section to create greater uniformity and consistency among the Florida citrus standards.

The unclassified designations would be eliminated in each standard because it is not a grade and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it should be discontinued.

It is proposed that the tolerances for defects and discoloration be determined based on percentages rather than a specific number of defective fruit, in order to create greater ease of use within the marketplace. Currently, if applicants do not have a copy of the standards with the table specifying the number of fruit permitted in a load and/or lot, they will not know if a load and/or lot of citrus meets a specified grade. Therefore, these percentages will create a more common trading language, and greater uniformity due to the fact that most of our current standards are based on a percentage of defects rather than number of defective fruit permitted. Also, separate tolerances for shipping point and en route or at destination are included to allow for more defects of a progressive nature, consistent with perishability.

The current standards contain tables specifying the total number of fruit permitted in individual samples. However, it is proposed that the tolerances be changed from specific number of defective fruit to percentages of defective fruit, thereby eliminating the existing tables. Therefore, it is proposed that an ''Application of Tolerances'' section be inserted in each of the regulations to provide percentage limitations of defective fruit in individual samples. This is done to create clarity and consistency among other U.S. standards.

The FCP requested that the ''Size'' sections of the standards be revised to allow greater flexibility in the packing of numerous varieties of fruit in various types and sizes of containers. It is proposed that the ''size'' section be revised as follows: ''fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods; fairly uniform in size means that not more than 9 percent of the grapefruit, 10 percent of the oranges, tangelos, or tangerines, per sample may vary more than one-half inch in diameter; and, in order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.'' ''Approved and recognized methods'' means that the fruit size will be determined at shipping point using specific pack patterns in a standard 4/5 bushel container, and that containers shall be well filled. Well filled being when at least one-half of the top layer fruit is not more than one-half inch below the top or two inches above the top of the container. Each sample would be allowed three grapefruit or five oranges, tangelos, and tangerines to vary more than one-half inch in diameter within a sample and still meet fairly uniform in size, provided that the entire lot averages not more than ten percent. If the lot does not meet these requirements it would fail to meet the size requirements, however, it could still meet the grade requirements as these are separate.

Definitions for ''well colored,'' ''fairly well colored,'' ''slightly colored,'' ''reasonably well colored,'' and ''poorly colored'' would be revised to include ''color characteristic for the variety'' in order to allow more flexibility in marketing varieties of fruit with different colors.

In the U.S. Standards for Grades of Florida Grapefruit, the definitions for ''smooth texture,'' ''fairly smooth texture,'' and ''slightly rough texture'' would be revised to include definitions for thickness of skin. In the past there was confusion as to what was considered thin skin, fairly thin skin, and slightly thick skin, however, with definitions for these terms the confusion would be alleviated.

The definitions for ''green spots'' in the ''classification of defects'' section are proposed to be aggregate areas instead of number of spots. ''Green spots'' are currently too restrictive, in that they allow not more than 10 spots for damage, and not more than 25 spots for serious damage, regardless of the size of the fruit. All of the other defects in the standards vary with the size of the fruit, larger areas allowed on larger fruit and smaller areas allowed on smaller fruit, therefore, this is too stringent. It is proposed to determine ''green spots'' based on an aggregate area; aggregate area being, clustering the spots into the area specified for the grade and commodity. If the ''green spots,'' when clustered together are outside of the specified area it will be scored as a defect, keeping in mind that larger areas are allowed on larger fruit and smaller areas on smaller fruit. For example, ''green spots'' on a 4⅛ inch diameter grapefruit, if they were clustered into a circle of more than ¾ inches, the ''green spots'' would be considered damaged.

The definitions for ''oil spotting'' and ''skin breakdown'' in the ''classification of defects'' sections in all standards are being revised. The ''oil spotting'' would be changed by deleting the number of spots affected, which is thought to be too restrictive for perfectly edible fruit; and, increasing the aggregate area allowed, in order to bring the definitions into conformity with other citrus standards. The definitions for ''skin breakdown'' would be revised to bring them more in line with ''oil spotting,'' as it is often difficult to distinguish between ''oil spotting'' and ''skin breakdown'' in its early stages.

Due to the similarity in defects caused by hail, thorn scratches, and scars, it is proposed that the definitions in the ''classification of defects'' sections be revised to score them all on the same basis as ''scars.'' Although they will still be described as ''hail,'' ''thorn scratches,'' or ''scars,'' they will all be scored on the same basis.

In the U.S. Standards for Grades of Florida Grapefruit, because sprouted seeds undermine the quality of fruit regardless of whether the sprouts are green or not, the ''sprouting'' definitions

in the ''classification of defects'' section would be revised by deleting reference to ''green'' sprouts and revising the allowable lengths for sprouts. However, the FCP suggests that the sprouted seeds should have an allowable length before scoring them. Therefore, it is proposed that: ''not more than six seeds have sprouts of more than ¼ inch in length, or more than 3 seeds with sprouts over ¾ inch in length'' for damage; ''not more than six seeds have sprouts of more than ½ inch in length, or more than 3 seeds with sprouts over 1 inch in length'' for serious damage; and, ''not more than six seeds have sprouts more than ¾ inch in length, or more than 3 seeds with sprouts over 1¼ inch in length'' for very serious damage.

The ''Note'' at the end of the ''classification of defects'' section references the size of the fruit in which to apply the aggregate area or length of defects. Currently it references a specific size fruit. However, due to the change in the ''size'' section, the specific size referenced would no longer be applicable. Therefore, it is proposed that the basis for scoring defects shall be based on a fruit with a specific diameter measurement; 4⅛ inches in diameter for grapefruit, 2⅞ inches in diameter for oranges and tangelos, and 2½ inches in diameter for tangerines.

Finally, the sections that reference the visual aid would be deleted because changes in some of the definition of defects which would make certain parts of the visual aid obsolete and because the visual aids are no longer available.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Subpart—United States Standards for Grades of Florida Grapefruit is revised to read as follows:

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

Sec.

51.750 U.S. Fancy.
51.751 U.S. No. 1 Bright.
51.752 U.S. No. 1.
51.753 U.S. No. 1 Golden.
51.754 U.S. No. 1 Bronze.
51.755 U.S. No. 1 Russet.
51.756 U.S. No. 2 Bright.
51.757 U.S. No. 2.
51.758 U.S. No. 2 Russet.
51.759 U.S. No. 3.

Tolerances

51.760 Tolerances.

Application of Tolerances

51.761 Application of tolerances.

Sample for Grade Determination

51.762 Sample for grade determination.

Size

51.763 Size.

Definitions

51.764 Similar varietal characteristics.
51.765 Well colored.
51.766 Firm.
51.767 Well formed.
51.768 Mature.
51.769 Smooth texture.
51.770 Injury.
51.771 Discoloration.
51.772 Fairly well colored.
51.773 Fairly smooth texture.
51.774 Damage.
51.775 Fairly firm.
51.776 Slightly misshapen.
51.777 Slightly rough texture.
51.778 Serious damage.
51.779 Slightly colored.
51.780 Poorly colored.
51.781 Misshapen.
51.782 Slightly spongy.
51.783 Very serious damage.
51.784 Diameter.
51.785 Classification of defects.

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

§ 51.750 U.S. Fancy.

''U.S. Fancy'' consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.771.);

(2) Firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Smooth texture;
(6) Well colored; and,
(7) Well formed.

(b) Free from:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Decay;
(5) Scab;
(6) Sprayburn;
(7) Unhealed skin breaks; and,
(8) Wormy fruit.

(c) Free from injury caused by:
(1) Bruises;
(2) Green spots;
(3) Oil spots;
(4) Scale;
(5) Scars;
(6) Skin breakdown; and,
(7) Thorn scratches.

(d) Free from damage caused by:
(1) Dirt or other foreign material;
(2) Disease;
(3) Dryness or mushy condition;
(4) Hail;
(5) Insects;
(6) Sprouting;
(7) Sunburn; and,
(8) Other means.

(e) For tolerances see § 51.760.

§ 51.751 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.752 U.S. No. 1.

''U.S. No. 1'' consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.771.);

(2) Fairly smooth texture;
(3) Fairly well colored;
(4) Firm;
(5) Mature;
(6) Similar varietal characteristics; and,
(7) Well formed.

(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.

(c) Free from damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Sprayburn;
(17) Sprouting;
(18) Sunburn;
(19) Thorn scratches; and,
(20) Other means.

(d) For tolerances see § 51.760.

§ 51.753 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third

of their surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.754 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each of these fruits shall be of rust mite type. For tolerances see § 51.760.

§ 51.755 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.760.

§ 51.756 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.760.

§ 51.757 U.S. No. 2.

''U.S. No. 2'' consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration.

(See § 51.771.)

(2) Fairly firm;

(3) Mature;

(4) Similar varietal characteristics;

(5) Slightly colored;

(6) Not more than slightly misshapen; and,

(7) Not more than slightly rough texture.

(b) Free from:

(1) Decay;

(2) Unhealed skin breaks; and,

(3) Wormy fruit.

(c) Free from serious damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Dirt or other foreign material;

(6) Disease;

(7) Dryness or mushy condition;

(8) Green spots;

(9) Hail;

(10) Insects;

(11) Oil spots;

(12) Scab;

(13) Scale;

(14) Scars;

(15) Skin breakdown;

(16) Sprayburn;

(17) Sprouting;

(18) Sunburn;

(19) Thorn scratches; and,

(20) Other means.

(d) For tolerances see § 51.760.

§ 51.758 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.760.

§ 51.759 U.S. No. 3.

''U.S. No. 3'' consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Mature;

(2) Misshapen;

(3) Poorly colored;

(4) Rough texture, not seriously bumpy;

(5) Similar varietal characteristics; and,

(6) Slightly spongy.

(b) Free from:

(1) Decay;

(2) Unhealed skin breaks; and,

(3) Wormy fruit.

(c) Free from very serious damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Disease;

(6) Dryness or mushy condition;

(7) Hail;

(8) Insects;

(9) Oil spotting;

(10) Scab;

(11) Scale;

(12) Scars;

(13) Skin breakdown;

(14) Sprayburn;

(15) Sprouting;

(16) Sunburn; and,

(17) Other means.

(d) For tolerances see § 51.760.

Tolerances

§ 51.760 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:

(a) *Defects.*

(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet.

(i) *For defects at shipping point* [1]. Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided*, that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.

(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.

(2) U.S. No. 3.

(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided*, that included in this amount not more than 1 percent shall be for decay or wormy fruit.

(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided*, that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 3 percent for decay or wormy fruit.

(b) *Discoloration.*

(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further*, that the entire lot averages within percentage specified.

(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further*, that the entire lot averages within the percentage specified.

(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further,* that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.761 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.760. Individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance less than 10 percent: *Provided,* that at least one decayed or wormy fruit may be permitted in any package: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Sample for Grade Determination

§ 51.762 Sample for grade determination.

Each sample shall consist of 33 fruit. When individual packages contain at least 33 fruit, the sample is drawn from one package; when individual packages contain less than 33 fruit, a sufficient number of adjoining packages are opened to form a 33 fruit sample.

Size

§ 51.763 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.

(b) ''Fairly uniform in size'' means that not more than 9 percent of the grapefruit per sample may vary more than one-half inch in diameter.

(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.764 Similar varietal characteristics.

Similar varietal characteristics means that the fruits in any container are similar in color and shape.

§ 51.765 Well colored.

Well colored means that the fruit has characteristic color for the variety with practically no trace of green color.

§ 51.766 Firm.

Firm means that the fruit is not soft, or noticeably wilted or flabby, and the skin is not spongy or puffy.

§ 51.767 Well formed.

Well formed means that the fruit has the shape characteristic of the variety.

§ 51.768 Mature.

Mature shall have the same meaning currently assigned the term in §§ 601.16, 601.17, and 601.18 of the Florida Citrus Code of 1949, as amended (chs. 28090 and 29760, Laws of Florida, 1953 and 1955), or as the definition of such term may hereafter be amended.

§ 51.769 Smooth texture.

Smooth texture means that the skin is thin and smooth for the variety and size of the fruit. ''Thin'' means that the skin thickness does not average more than ⅜ inch (9.5 mm), on a central cross section, on grapefruit 4⅛ inches (104.8 mm) in diameter, allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.770 Injury.

Injury means any specific defect described in § 51.785, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.771 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck-type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 51.772 Fairly well colored.

Fairly well colored means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the characteristic color predominates over the green color.

§ 51.773 Fairly smooth texture.

Fairly smooth texture means that the skin is fairly thin and not coarse for the variety and size of the fruit. ''Fairly thin'' means that the skin thickness does not average more than ½ inch (12.7 mm), on a grapefruit 4⅛ inches (104.8 mm), allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.774 Damage.

Damage means any specific defect described in § 51.785 Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.775 Fairly firm.

Fairly firm means that the fruit may be slightly soft, but not bruised, and the skin is not spongy or puffy.

§ 51.776 Slightly misshapen.

Slightly misshapen means that the fruit has fairly good shape characteristic of the variety and is not more than slightly elongated or pointed or otherwise deformed.

§ 51.777 Slightly rough texture.

Slightly rough texture means that the skin may be slightly thick but not excessively thick, materially ridged or grooved. ''Slightly thick'' means that the skin thickness does not average more than ⅝ inch (15.9 mm), on a central cross section, on a grapefruit 4⅛ inches (104.8 mm), allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

§ 51.778 Serious damage.

Serious damage means any specific defect described in § 51.785, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.779 Slightly colored.

Slightly colored means that except for an aggregate area of green color which does not exceed the area of a circle 2 inches (50.8 mm) in diameter, the fruit surface shows some characteristic color.

§ 51.780 Poorly colored.

Poorly colored means that not more than 25 percent of the surface may be of a solid dark green color.

§ 51.781 Misshapen.

Misshapen means that the fruit is decidedly elongated, pointed, or flatsided.

§ 51.782 Slightly spongy.

Slightly spongy means that the fruit is puffy or slightly wilted but not flabby.

§ 51.783 Very serious damage.

Very serious damage means any specific defect in § 51.785, Table I; or an

equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.784 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.785 Classification of defects.

TABLE I

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type.	Scars are cracked or dark and aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch (19.1 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.
Buckskin		Aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface..	Aggregating more than 50 percent of the surface
Caked melanose		Aggregating more than a circle ¾ inch (19.1mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Dryness or mushy condition.		Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¾ inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle ½ inch (12.7 mm) in diameter, caused by scale.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter, caused by scale.	Aggregating more than a circle 1 inch (25.4 mm) in diameter, caused by scale.	Aggregating more than ⅓ of the surface, caused by scale.
Oil spots	Aggregating more than a circle ½ inch (12.7 mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than ⅓ of the surface
Scab		Materially detracts from the shape or texture, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ⅞ inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the ''button'' at the stem end, or more than 6 scattered on other portions of the fruit.	Blotch aggregating more than a circle ¾ inch (19.1 mm) in diameter, or occurring as a ring more than a circle 1¼ inches (31.8 mm) in diameter.	Blotch aggregating more than a circle 1 inch (25.4 mm) in diameter, or occurring as a ring more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, Hail, or Thorn scratches.	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Very deep or very rough aggregating more than a circle ½ inch (12.7 mm) in diameter; deep or rough aggregating more than a circle 1 inch (25.4 mm) in diameter; slightly rough or of slight depth aggregating more than 10 percent of fruit surface.	Very deep or very rough aggregating more than a circle 1 inch (25.4 mm) in diameter; deep or rough aggregating more than 5 percent of fruit surface; slight depth or slightly rough aggregating more than 15 percent of fruit surface.	Very deep or very rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.

TABLE I—Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Sprayburn		Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Hard and aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprouting		More than six seeds have sprouts of more than ¼ inch (6.4 mm) in length, or more than 3 seeds with sprouts over ¾ inch (19.1 mm) in length.	More than six seeds have sprouts of more than ½ inch (12.7 mm) in length, or more than 3 seeds with sprouts over 1 inch (25.4 mm) in length.	More than six seeds have sprouts of more than ¾ inch (19.1 mm) in length, or more than 3 seeds with sprouts over 1¼ inches (31.8 mm) in length.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

Note: References to area or aggregating area, or length are based on a grapefruit 4⅛ inches (104.8 mm) in diameter.

3. Part 51, Subpart—United States Standards for Grades of Florida Oranges and Tangelos is revised to read as follows:

Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

Sec.
51.1140 General.

Grades

51.1141 U.S.Fancy.
51.1142 U.S.No. 1 Bright.
51.1143 U.S.No. 1.
51.1144 U.S.No. 1 Golden.
51.1145 U.S.No. 1 Bronze.
51.1146 U.S.No. 1 Russet.
51.1147 U.S.No. 2 Bright.
51.1148 U.S.No. 2.
51.1149 U.S.No. 2 Russet.
51.1150 U.S.No. 3.

Tolerances

51.1151 Tolerances.

Application of Tolerances

51.1152 Application of tolerances.

Sample for Grade Determination

51.1153 Sample for grade determination.

Size

51.1154 Size.

Definitions

51.1155 Similar varietal characteristics.
51.1156 Well colored.
51.1157 Firm.
51.1158 Well formed.
51.1159 Mature.
51.1160 Smooth texture.
51.1161 Injury.
51.1162 Discoloration.
51.1163 Fairly smooth texture.
51.1164 Damage.
51.1165 Fairly well colored.
51.1166 Reasonably well colored.
51.1167 Poorly colored.
51.1168 Fairly firm.
51.1169 Slightly misshapen.
51.1170 Slightly rough texture.
51.1171 Serious damage.
51.1172 Misshapen.
51.1173 Slightly spongy.
51.1174 Very serious damage.
51.1175 Diameter.
51.1176 Classification of defects.

Standards for Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

51.1177 U.S.Grade AA Juice (Double A).
51.1178 U.S.Grade A Juice.
51.1179 Maximum anhydrous citric permissible for corresponding total soluble solids.
51.1180 Method of juice extraction.

Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

§ 51.1140 General.

The standards contained in this subpart apply only to the common or sweet orange group and varieties and hybrids of varieties belonging to the Mandarin group, except tangerines, and to the citrus fruit commonly known as ''tangelo''—a hybrid between tangerine or mandarin orange (citrus reticulata) with either the grapefruit or pomelo (C. paradisi and C. grandis). Separate U.S. standards apply to tangerines. The standards for internal quality contained in §§ 51.1177 through 51.1180 apply only to common sweet oranges (citrus sinensis (L) Osbeck).

Grades

§ 51.1141 U.S. Fancy.

''U.S. Fancy'' consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.);
(2) Firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Smooth texture;
(6) Well colored; and,
(7) Well formed.

(b) Free from:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Creasing;
(5) Decay;
(6) Scab;
(7) Split navels;
(8) Sprayburn;
(9) Undeveloped segments;
(10) Unhealed skin breaks; and,
(11) Wormy fruit.

(c) Free from injury caused by:
(1) Bruises;
(2) Green spots;
(3) Oil spots;
(4) Rough, wide or protruding navels;
(5) Scale;
(6) Scars;
(7) Skin breakdown; and,
(8) Thorn scratches.

(d) Free from damage caused by:
(1) Dirt or other foreign material;
(2) Disease;
(3) Dryness or mushy condition;
(4) Hail;
(5) Insects;
(6) Riciness or woodiness;
(7) Sunburn; and,
(8) Other means.

(e) For tolerances see § 51.1151.

(f) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1142 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that

no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1143 U.S. No. 1.

''U.S. No. 1'' consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Color;

(i) Early and midseason varieties shall be fairly well colored.

(ii) For Valencia and other late varieties, not less than 50 percent, by count, shall be fairly well colored and the remainder reasonably well colored.

(2) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.);

(3) Fairly smooth texture;

(4) Firm;

(5) Mature;

(6) Similar varietal characteristics; and,

(7) Well formed.

(b) Free from:

(1) Decay;

(2) Unhealed skin breaks; and,

(3) Wormy fruit.

(c) Free from damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Creasing;

(6) Dirt or other foreign material;

(7) Disease;

(8) Dryness or mushy condition;

(9) Green spots;

(10) Hail;

(11) Insects;

(12) Oil spots;

(13) Riciness or woodiness;

(14) Scab;

(15) Scale;

(16) Scars;

(17) Skin breakdown;

(18) Split, rough or protruding navels;

(19) Sprayburn;

(20) Sunburn;

(21) Thorn scratches; and,

(22) Other means.

(d) For tolerances see § 51.1151.

(e) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1144 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1145 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit shall be of rust mite type.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1146 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1147 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1148 U.S. No. 2.

''U.S. No. 2'' consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.1162.)

(2) Fairly firm;

(3) Mature;

(4) Reasonably well colored;

(5) Similar varietal characteristics;

(6) Not more than slightly misshapen; and,

(7) Not more than slightly rough texture.

(b) Free from:

(1) Decay;

(2) Unhealed skin breaks; and,

(3) Wormy fruit.

(c) Free from serious damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Creasing;

(6) Dirt or other foreign material;

(7) Disease;

(8) Dryness or mushy condition;

(9) Green spots;

(10) Hail;

(11) Insects;

(12) Oil spots;

(13) Riciness or woodiness;

(14) Scab;

(15) Scale;

(16) Scars;

(17) Skin breakdown;

(18) Split, rough or protruding navels;

(19) Sprayburn;

(20) Sunburn;

(21) Thorn scratches; and,

(22) Other means.

(d) For tolerances see § 51.1151.

(e) Internal quality: Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1149 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see § 51.1151.

(b) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

§ 51.1150 U.S. No. 3.

''U.S. No. 3'' consists of oranges which meet the following requirements:

(a) Basic requirements:

(1) Mature;

(2) Misshapen;

(3) Poorly colored;

(4) Rough texture, not seriously lumpy;

(5) Similar varietal characteristics; and,

(6) Slightly spongy.

(b) Free from:

(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Disease;
(7) Dryness or mushy condition;
(8) Hail;
(9) Insects;
(10) Riciness or woodiness;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Split navels;
(16) Sprayburn;
(17) Sunburn; and,
(18) Other means.
(d) For tolerances see § 51.1151.
(e) Internal quality. Lots meeting the internal requirements for ''U.S. Grade AA Juice (Double A)'' or ''U.S. Grade A Juice'' may be so specified in connection with the grade. (See §§ 51.1177 through 51.1180.)

Tolerances

§ 51.1151 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:
(a) *Defects.*
(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet grades.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided,* that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.
(2) U.S. No. 3.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided,* that included in this amount not more than 1 percent shall be for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:
(A) 10 percent for fruit having permanent defects; or,
(B) 3 percent for decay or wormy fruit.
(b) *Discoloration.*
(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further,* that the entire lot averages within the percentage specified.
(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further,* that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.1152 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1151: *Provided,* that individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Sample For Grade Determination

§ 51.1153 Sample for grade determination.

Each sample shall consist of 50 fruit. When individual packages contain at least 50 fruit, the sample is drawn from one package; when individual packages contain less than 50 fruit, a sufficient number of adjoining packages are opened to form a 50 fruit sample.

Size

§ 51.1154 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.
(b) ''Fairly uniform in size'' means that not more than 10 percent of the oranges per sample may vary more than one-half inch in diameter.
(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.1155 Similar varietal characteristics.

Similar varietal characteristics means that the fruits in any container are similar in color and shape.

§ 51.1156 Well colored.

Well colored as applied to common oranges and tangelos means that the fruit has characteristic color for the variety with practically no trace of green color.

§ 51.1157 Firm.

Firm as applied to common oranges and tangelos means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), ''firm'' means that the fruit is not extremely puffy, although the skin may be slightly loose.

§ 51.1158 Well formed.

Well formed means that the fruit has the shape characteristic of the variety.

§ 51.1159 Mature.

(a) *Mature* for other than Temple oranges shall have the same meaning currently assigned that term in section 601.19 and 601.20 of the Florida Citrus Code of 1949, as amended (ch. 25149, Laws of Florida, 1949), or as the

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

definition of such term may hereafter be amended;

(b) *Mature* for Temple oranges shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended; and,

(c) *Mature* for Tangelos shall have the same meaning currently assigned that term in section 601.231 and 601.232 of the Florida Citrus Code of 1949, as amended (ch. 29757, Laws of Florida, 1955), or as the definition of such term may hereafter be amended.

§ 51.1160 Smooth texture.

Smooth texture means that the skin is thin and smooth for the variety and size of the fruit.

§ 51.1161 Injury.

Injury means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1162 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 51.1163 Fairly smooth texture.

Fairly smooth texture means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 51.1164 Damage.

Damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1165 Fairly well colored.

Fairly well colored as applied to common oranges and tangelos means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the characteristic color predominates over the green color.

§ 51.1166 Reasonably well colored.

Reasonably well colored as applied to common oranges means that the characteristic color predominate over the green color on at least two-thirds of the fruit surface, in the aggregate.

§ 51.1167 Poorly colored.

Poorly colored as applied to common oranges means that not more than 25 percent of the surface may be solid dark green color.

§ 51.1168 Fairly firm.

Fairly firm as applied to common oranges and tangelos, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), means that the skin of the fruit is not extremely puffy or extremely loose.

§ 51.1169 Slightly misshapen.

Slightly misshapen means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

§ 51.1170 Slightly rough texture.

Slightly rough texture means that the skin is not of smooth texture but is not materially ridged, grooved, or wrinkled.

§ 51.1171 Serious damage.

Serious damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1172 Misshapen.

Misshapen means that the fruit is decidedly elongated, pointed or flatsided.

§ 51.1173 Slightly spongy.

Slightly spongy means that the fruit is puffy or slightly wilted but not flabby.

§ 51.1174 Very serious damage.

Very serious damage means any specific defect described in § 51.1176, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1175 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.1176 Classification of defects.

TABLE I

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation	.....	Not occurring as light speck type.	Scars are cracked or dark and aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than ¾ inch (19.1 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.

TABLE I—Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Buckskin		Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing		Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition.		Affecting all segments more than 1/4 inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 1/2 inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 3/4 inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter, caused by scale.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter, caused by scale.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter, caused by scale.	Aggregating more than 1/3 of the surface, caused by scale.
Oil spots	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter.	Aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter.	Aggregating more than 1/3 of the surface.
Scab		Materially detracts from the shape or texture, or aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the ''button'' at the stem end, or more than 6 scattered on other portions of the fruit.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, hail, or thorn scratches.	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Deep or rough aggregating more than a circle 1/4 inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle 7/8 inch (22.2 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1 1/4 inches (31.8. mm) in diameter.	Deep or rough aggregating more than a circle 1/2 inch (12.7 mm) in diameter; slightly rough with depth aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter; smooth or fairly smooth with slightly depth aggregating more than 10 percent of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle 1/4 inch (6.4 mm) in diameter.	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 7/8 inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Hard and aggregating more than a circle 1 1/2 inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface
Split, rough, protruding navels.	Split is unhealed, or more than 1/8 inch (3.2 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from the appearance.	Split is unhealed, or more than 1/4 inch (6.4 mm) in length, or more than three well healed splits, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed, or more than 1/2 inch (12.7 mm) in length, or two or more splits aggregate more than 1 inch (25.4 mm) in length, or navel protrudes beyond general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed or fruit is seriously weakened
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

Note: References to area or aggregating area, or length are based on an orange or tangelo 2 7/8 inches (73.0 mm) in diameter.

Standards For Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

§ 51.1177 U.S. Grade AA Juice (Double A).

Any lot of oranges, the juice content of which meets the following requirements, may be designated ''U.S. Grade AA Juice (Double A)'':

(a) Each lot of fruit shall contain an average of not less than 5 gallons (18.9 liters) of juice per standard packed box of 1⅗ bushels.

(b) The average juice content for any lot of fruit shall have not less than 10 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table II of § 51.1179.

§ 51.1178 U.S. Grade A Juice.

Any lot of oranges, the juice content of which meets the following requirements, may be designated ''U.S. Grade A Juice'':

(a) Each lot of fruit shall contain an average of not less than 4½ gallons (17.0 liters) of juice per standard packed box of 1⅗ bushels.

(b) The average juice content for any lot of fruit shall have not less than 9 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table II of § 51.1179.

§ 51.1179 Maximum anhydrous citric acid permissible for corresponding total soluble solids.

For determining the grade of juice, the maximum permissible anhydrous citric acid content in relation to corresponding total soluble solids in the fruit is set forth in the following Table II together with the minimum ratio of total soluble solids to anhydrous citric acid:

TABLE II

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
9.0	0.947	9.50–1
9.1	.963	9.45–1
9.2	.979	9.40–1
9.3	.995	9.35–1
9.4	1.011	9.30–1
9.5	1.027	9.25–1
9.6	1.043	9.20–1
9.7	1.060	9.15–1
9.8	1.077	9.10–1
9.9	1.094	9.05–1
10.0	1.111	9.00–1
10.1	1.128	8.95–1
10.2	1.146	8.90–1

TABLE II—Continued

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
10.3	1.164	8.85–1
10.4	1.182	8.80–1
10.5	1.200	8.75–1
10.6	1.218	8.70–1
10.7	1.237	8.65–1
10.8	1.256	8.60–1
10.9	1.275	8.55–1
11.0	1.294	8.50–1
11.1	1.306	8.50–1
11.2	1.318	8.50–1
11.3	1.329	8.50–1
11.4	1.341	8.50–1
11.5	1.353	8.50–1
11.6	1.365	8.50–1
11.7	1.376	8.50–1
11.8	1.388	8.50–1
11.9	1.400	8.50–1
12.0	1.412	8.50–1
12.1	1.424	8.50–1
12.2	1.435	8.50–1
12.3	1.447	8.50–1
12.4	1.459	8.50–1
12.5	1.471	8.50–1
12.6	1.482	8.50–1
12.7	1.494	8.50–1
12.8	1.506	8.50–1
12.9	1.517	8.50–1
13.0	1.530	8.50–1
13.1	1.541	8.50–1
13.2	1.553	8.50–1
13.3	1.565	8.50–1
13.4	1.576	8.50–1
13.5	1.588	8.50–1
13.6	1.600	8.50–1
13.7	1.612	8.50–1
13.8	1.624	8.50–1
13.9	1.635	8.50–1
14.0	1.647	8.50–1
14.1	1.659	8.50–1
14.2	1.671	8.50–1
14.3	1.682	8.50–1
14.4	1.694	8.50–1
14.5	1.705	8.50–1
14.6	1.718	8.50–1
14.7	1.729	8.50–1
14.8	1.741	8.50–1
14.9	1.753	8.50–1
15.0	1.765	8.50–1
15.1	1.776	8.50–1
15.2	1.788	8.50–1
15.3	1.800	8.50
15.4	1.812	8.50–1
15.5	1.824	8.50–1
15.6 or more		8.50–1

§ 51.1180 Method of juice extraction.

The juice used in the determining of solids, acids and juice content shall be extracted from representative samples as thoroughly as possible with a hand reamer or by such mechanical extractor or extractors as may be approved. The juice shall be strained through cheese cloth or other approved straining device of extra fine mesh to prevent passage of juice cells, pulp, or seeds.

4. Part 51, Subpart—United States Standards for Grades of Florida Tangerines is revised to read as follows:

Subpart—United States Standards for Grades of Florida Tangerines

Grades

Sec.
51.1810 U.S. Fancy.
51.1811 U.S. No. 1 Bright.
51.1812 U.S. No. 1.
51.1813 U.S. No. 1 Golden.
51.1814 U.S. No. 1 Bronze.
51.1815 U.S. No. 1 Russet.
51.1816 U.S. No. 2 Bright.
51.1817 U.S. No. 2.
51.1818 U.S. No. 2 Russet.
51.1819 U.S. No. 3.

Tolerances

51.1820 Tolerances.

Application of Tolerances

51.1821 Application of tolerances.

Sample for Grade Determination

51.1822 Sample for grade determination.

Size

51.1823 Size.

Definitions

51.1824 Mature.
51.1825 Firm.
51.1826 Well formed.
51.1827 Damage.
51.1828 Highly colored.
51.1829 Discoloration.
51.1830 Well colored.
51.1831 Fairly well colored.
51.1832 Fairly firm.
51.1833 Fairly well formed.
51.1834 Serious damage.
51.1835 Reasonably well colored.
51.1836 Very serious damage.
51.1837 Diameter.
51.1838 Classification of defects.

Subpart—United States Standards for Grades of Florida Tangerines

§ 51.1810 U.S. Fancy.

''U.S. Fancy'' consists of tangerines which meet the following requirements:

(a) Basic requirements:

(1) Discoloration. Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);

(2) Firm;

(3) Highly colored;

(4) Mature; and,

(5) Well formed.

(b) Free from:

(1) Caked melanose;

(2) Decay;

(3) Unhealed skin breaks; and,

(4) Wormy fruit.

(c) Free from damage caused by:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Creasing;

(5) Dirt or other foreign material;
(6) Dryness or mushy condition;
(7) Disease;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Sprayburn;
(17) Sunburn; and,
(18) Other means.
(d) For tolerances see § 51.1820.

§ 51.1811 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1812 U.S. No. 1.

''U.S. No. 1'' consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);
(2) Fairly well colored;
(3) Firm;
(4) Mature; and,
(5) Well formed.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 51.1820.

§ 51.1813 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1814 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on each fruit shall be of rust mite type. For tolerances see § 51.1820.

§ 51.1815 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that at least 30 percent, by count, of the fruit shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.1820.

§ 51.1816 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration. For tolerances see § 51.1820.

§ 51.1817 U.S. No. 2.

''U.S. No. 2'' consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Discoloration. Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 51.1829.);
(2) Fairly firm;
(3) Fairly well formed;
(4) Mature; and,
(5) Reasonably well colored.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Dirt or other foreign material;
(7) Disease;
(8) Dryness or mushy condition;
(9) Green spots;
(10) Hail;
(11) Insects;
(12) Oil spots;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 51.1820.

§ 51.1818 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that at least 10 percent of the fruit shall have more than one-half of their surface, in the aggregate, affected by any type of discoloration. For tolerances see § 51.1820.

§ 51.1819 U.S. No. 3.

''U.S. No. 3'' consists of tangerines which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Not flabby; and,
(3) Not seriously lumpy.
(b) Free from:
(1) Decay;
(2) Unhealed skin breaks; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Caked melanose;
(4) Creasing;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Hail;
(9) Insects;
(10) Scab;
(11) Scale;
(12) Scars;
(13) Skin breakdown;
(14) Sprayburn;
(15) Sunburn; and,
(16) Other means.
(d) For tolerances see § 51.1820.

Tolerances

§ 51.1820 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by count, are provided as specified:
(a) *Defects.*
(1) U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, U.S. No. 1 Golden, U.S. No. 1 Bronze, U.S. No. 1 Russet, U.S. No. 2 Bright, U.S. No. 2, and U.S. No. 2 Russet grades.
(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the specified grade: *Provided*, that included in this amount not more than 5 percent shall be allowed for defects causing very serious damage, including in this latter amount not more than 1 percent for decay or wormy fruit.
(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the specified grade:

[1] Shipping point, as used in the standards in this subpart, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

Provided, that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 7 percent for defects causing very serious damage, including therein not more than 5 percent for very serious damage by permanent defects and not more than 3 percent for decay or wormy fruit.

(2) U.S. No. 3.

(i) *For defects at shipping point.*[1] Not more than 10 percent of the fruit in any lot may fail to meet the requirements of the grade: *Provided,* that included in this amount not more than 1 percent shall be for decay or wormy fruit.

(ii) *For defects en route or at destination.* Not more than 12 percent of the fruit which fail to meet the requirements of the grade: *Provided,* that included in this amount not more than the following percentages shall be allowed for defects listed:

(A) 10 percent for fruit having permanent defects; or,

(B) 3 percent for decay or wormy fruit.

(b) *Discoloration.*

(1) U.S. No. 1 Bright, U.S. No. 1, U.S. No. 2 Bright, and U.S. No. 2. Not more than 10 percent of the fruit in any lot may fail to meet the requirements relating to discoloration as specified in each grade. No sample may have more than 15 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(2) U.S. No. 1 Golden. Not more than 30 percent of the fruit shall have in excess of one-third of their surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to increase this percentage. No sample may have more than 40 percent of the fruit with excessive discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(3) U.S. No. 1 Bronze, and U.S. No. 1 Russet. At least 30 percent of the fruit shall have in excess of one-third of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage. No sample may have less than 20 percent of the fruit with required discoloration: *And provided further,* that the entire lot averages within the percentage specified.

(4) U.S. No. 2 Russet. At least 10 percent of the fruit shall have in excess of one-half of the surface, in the aggregate, affected by discoloration, and no part of any tolerance shall be allowed to reduce this percentage: *And provided further,* that the entire lot averages within the percentage specified.

Application of Tolerances

§ 51.1821 Application of tolerances.

Individual samples are subject to the following limitations, unless otherwise specified in § 51.1820: *Provided,* that individual samples shall have not more than one and one-half times a specified tolerance of 10 percent or more, and not more than double a specified tolerance of less than 10 percent: *And provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

Sample for Grade Determination

§ 51.1822 Sample for grade determination.

Each sample shall consist of 50 fruit. When individual packages contain at least 50 fruit, the sample is drawn from one package; when individual packages contain less than 50 fruit, a sufficient number of adjoining packages are opened to form a 50 fruit sample.

Size

§ 51.1823 Size.

(a) Fruits shall be fairly uniform in size and shall be packed in containers according to approved and recognized methods.

(b) ''Fairly uniform in size'' means that not more than 10 percent of the tangerines per sample may vary more than one-half inch in diameter.

(c) In order to allow for variations incident to proper sizing, not more than 10 percent of the samples in any lot may fail to meet the requirements of size.

Definitions

§ 51.1824 Mature.

Mature shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951) or, as the definition of such term may hereafter be amended.

§ 51.1825 Firm.

Firm means that the flesh is not soft and the fruit is not badly puffy and that the skin has not become materially separated from the flesh of the tangerine.

§ 51.1826 Well formed.

Well formed means that the fruit has the characteristic tangerine shape and is not deformed.

§ 51.1827 Damage.

Damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1828 Highly colored.

Highly colored means that the ground color of each fruit is a deep tangerine color, or characteristic color for the variety, with practically no trace of yellow color.

§ 51.1829 Discoloration.

Discoloration means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 51.1830 Well colored.

Well colored means that a good yellow or better ground color predominates over the green color on the entire fruit surface with no distinct green color present, and that some portion of the surface has a reddish tangerine blush, or characteristic color for the variety.

§ 51.1831 Fairly well colored.

Fairly well colored means that the surface of the fruit may have green color which does not exceed the aggregate area of a circle 1¼ inches (31.8 mm) in diameter and that the remainder of the surface has a yellow or better ground color with some portion of the surface showing reddish tangerine blush, or characteristic color for the variety.

§ 51.1832 Fairly firm.

Fairly firm means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.

§ 51.1833 Fairly well formed.

Fairly well formed means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.

§ 51.1834 Serious damage.

Serious damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1835 Reasonably well colored.

Reasonably well colored means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggregate, and that each fruit shall show practically no lemon color.

§ 51.1836 Very serious damage.

Very serious damage means any specific defect described in § 51.1838, Table I; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.1837 Diameter.

Diameter means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 51.1838 Classification of defects.

TABLE I

Factor	Damage	Serious damage	Very serious damage
Ammoniation	Not occurring as light speck type, or detracts more than discoloration permitted in the grade.	Scars are cracked or dark and aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly watersoaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than 1/2 inch (12.7 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.
Buckskin	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing	Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition	Affecting all segments more than 1/8 inch (3.2 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 1/4 inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than 1/2 inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Oil spots	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scab	Materially detracts from the shape or texture, or aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, Hail, and Thorn scratches	Deep or rough aggregating more than a circle 1/4 inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle 3/4 inch (19.1 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1 1/8 inches (28.6 mm) in diameter.	Deep or rough aggregating more than a circle 1/2 inch (12.7 mm) in diameter; slightly rough with slight depth aggregating more than a circle 1 1/8 inches (28.6 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10 percent of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle 1/2 inch (12.7 mm) in diameter.	Aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn	Skin is hard and aggregating more than a circle 3/4 inch (19.1 mm) in diameter.	Skin is hard and aggregating more than a circle 1 1/4 inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn	Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

NOTE: References to area or aggregate area, or length are based on a tangerine 2 1/2 inches in diameter (63.5 mm).

Dated: February 8, 1995.

Lon Hatamiya,

Administrator.

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Reader Aids

Federal Register

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INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	**202–523–5227**
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Machine readable documents	**523–3447**

Code of Federal Regulations

Index, finding aids & general information	**523–5227**
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Laws

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Additional Information	**523–5230**

Presidential Documents

Executive orders and proclamations	**523–5230**
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Privacy Act Compilation	**523–3187**
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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

5997–6382.....1
6383–6646.....2
6647–6944.....3
6945–7110.....6
7111–7428.....7
7429–7696.....8
7697–7884.....9
7885–8168.....10
8169–8282.....13
8283–8520.....14
8521–8920.....15
8921–9280.....16
9281–9594.....17
9595–9772.....21
9773–10004.....22

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6767.....7427
6768.....8517
6769.....8519
6770.....9593

Executive Orders:
April 17, 1926
(Revoked in part by PLO 7115).....8956
12898 (Amended by EO 12948).....6381
12948.....6381
12949.....8169

Administrative Orders:
Memorandums:
February 7, 1995.....7885
Presidential Determinations:
No. 95–14 of Feb. 6, 1995.....8521

4 CFR

28.....9773
29.....9773

5 CFR

185.....7891
211.....6595
214.....6383
317.....6383
319.....6383
353.....6595
359.....6383
430.....6595
534.....6383
1650.....9595
2635.....6390

Proposed Rules:
532.....6041
950.....8961

7 CFR

0.....8446
1.....8446
25.....6945
29.....7429
47.....8446
50.....8446
51.....8446
52.....8446
53.....8446
54.....8446
70.....6638
97.....8446
110.....8118
300.....6957
319.....5997, 6957, 8921
322.....5997
372.....6000
729.....7429
905.....8924
911.....8523
915.....8523, 8926
920.....7430
944.....8924
985.....6392, 8524
997.....6394
1005.....7432
1007.....7432
1011.....7432
1046.....7432
1050.....7434
1212.....7435
1240.....9608
1435.....7697
1751.....8171
1755.....9079

Proposed Rules:
29.....6452, 6453
51.....8973, 9990
52.....8573
457.....9629
810.....9790
1001.....6606, 7290
1002.....6606, 7290
1004.....6606, 7290
1005.....6606, 7290
1006.....6606, 7290
1007.....6606, 7290
1011.....6396, 6606, 7290
1012.....6606, 7290
1013.....6606, 7290
1030.....6606, 7290
1032.....6005, 6606, 7290
1033.....6606, 7290
1036.....6606, 7290
1040.....6606, 7290
1044.....6606, 7290
1046.....6606, 7290
1049.....6606, 7290
1050.....6606, 7290
1064.....6606, 7290
1065.....6606, 7290
1068.....6606, 7290
1075.....6606, 7290
1076.....6606, 7290
1079.....6606, 7290
1093.....6606, 7290
1094.....6606, 7290
1096.....6606, 7290
1099.....7290
1106.....6606, 7290
1108.....6606, 7290
1124.....6606, 7290
1126.....6606, 7290, 7465
1131.....6606, 7290, 7466
1134.....6606, 7290
1135.....6606, 7290
1137.....6606, 7290
1138.....6606, 7290
1139.....6606, 7290
1230.....8579
1485.....6352

1717.....8981

8 CFR

103.....6647, 9773
292.....6647
299.....6647, 9774
310.....6647
312.....6647
313.....6647
315.....6647
316.....6647
316a.....6647
319.....6647
322.....6647
324.....6647
325.....6647
327.....6647
328.....6647
329.....6647
330.....6647
331.....6647
332.....6647
332a.....6647
332b.....6647
332c.....6647
332d.....6647
333.....6647
334.....6647
334a.....6647
335.....6647
335a.....6647
335c.....6647
336.....6647
337.....6647
338.....6647
339.....6647
340.....6647
343b.....6647
344.....6647
499.....6647

9 CFR

Ch. II.....8446
91.....9609
92.....9611
202.....8446

Proposed Rules:

50.....9631
71.....9632
77.....9631
92.....7137, 9631
94.....6454, 7138, 9633
98.....7137
308.....6774
310.....6774
318.....6774, 6975
320.....6774
325.....6774
326.....6774
327.....6774
381.....6774, 6975

10 CFR

20.....7900

Proposed Rules:

Chapter I.....9634
50.....7467, 9634
52.....7467
100.....7467

11 CFR

100.....7862
104.....7862
113.....7862

12 CFR

3.....7903
32.....8526
201.....9281
208.....8177
225.....8177
325.....8182
330.....7701
344.....7111
409.....9612
1617.....7660

Proposed Rules:

Ch. XVII.....7468
35.....7467
208.....6042
225.....6042
325.....8582
327.....9266, 9270
348.....7139
363.....8583

13 CFR

107.....7392

14 CFR

25.....6616
33.....7112
39.....6397, 6652, 6654, 8283, 8284, 8286, 8288, 8290, 8292, 8294, 8295, 8297, 8538, 8540, 8542, 8544, 8927, 8929, 8930, 9613, 9616, 9619, 9621
71.....6657, 6958, 6959, 6960, 7115, 7116, 7439, 7441, 7442, 7821, 8164, 8165, 8166, 9281, 9282, 9283, 9285, 9286, 9287
91.....8166
97.....6398, 6961, 6962, 6963, 9287, 9289
121.....6616
135.....6616
302.....6919

Proposed Rules:

Ch. I.....6045, 9302
1.....7380
25.....6456, 6632, 7479
33.....7380
39.....6045, 6459, 7140, 7143, 7480, 7482, 7485, 7919, 7920, 7922, 7924, 8205, 8206, 8591, 8593, 8595, 9302, 9304, 9645, 9647, 9649, 9792, 9794, 9796, 9799, 9800
71.....6461, 6462, 6686, 6975, 7718, 9652, 9653
121.....6632, 8490
125.....6632
135.....6632

15 CFR

15a.....9291
925.....9294

16 CFR

305.....9295
1500.....8188

Proposed Rules:

Ch. 1.....6463
307.....8312
310.....8313
1700.....9654

17 CFR

140.....8194
230.....6965

Proposed Rules:

1.....7925
240.....7718
249.....7718
270.....7146
274.....7146
275.....9750
279.....9750

18 CFR

157.....6657, 7821
284.....9775
1310.....8195

Proposed Rules:

803.....7925
804.....7925
805.....7925

19 CFR

4.....6966

Proposed Rules:

134.....6464
210.....7723
353.....9802
355.....9802
356.....9802

20 CFR

404.....8140
416.....8140
422.....7117

Proposed Rules:

217.....7728
226.....7729
232.....7729

21 CFR

14.....9296
101.....7711
178.....8545
310.....8916
510.....7121
558.....7121, 8547

Proposed Rules:

20.....8772
101.....8989
111.....8989
170.....8989
201.....9554
310.....6892, 8989
876.....8595
896.....9762

22 CFR

43.....7443
226.....7712
514.....8547

Proposed Rules:

140.....7737

23 CFR

Proposed Rules:

630.....9306

24 CFR

91.....6967
207.....9297
213.....9297
221.....9297
236.....9297
390.....9530
395.....9530
585.....9734
907.....6399
3500.....8812

Proposed Rules:

81.....9154

25 CFR

Ch. VI.....8553

Proposed Rules:

Ch. VI.....8806

26 CFR

1.....8932, 9776
300.....8298

Proposed Rules:

1.....7487, 7488, 9309
53.....7488

28 CFR

0.....8932, 9777
64.....7446

29 CFR

825.....6658
1910.....7447, 9624
1915.....9624
1926.....9624
2619.....8555
2676.....8555

30 CFR

250.....9298
254.....9626
870.....9974
886.....9974
887.....9974
888.....9974
914.....6400
917.....8558
926.....6006
931.....8560

Proposed Rules:

Ch. II.....6977, 7152
6.....8209
18.....8209
19.....8209
20.....8209
21.....8209
22.....8209
23.....8209
26.....8209
27.....8209
29.....8209
33.....8209
35.....8209
250.....9312
756.....7926
914.....9313
917.....9314
935.....9317

31 CFR

500.....8933
550.....8300
575.....6376

32 CFR

40a.....8936
113.....8940
199.....6013
320.....7908
552.....8305
553.....8305

Proposed Rules:

199.....7489

33 CFR

117.....6658, 7121, 7122, 8941

161.....8942
165 .....7909, 7910, 8943
Proposed Rules:
Ch. I.....7927, 8993
117 .....7928, 7930, 8209
137.....7652

34 CFR

74.....6660
75.....6660
99.....8563
Proposed Rules:
668.....6940

36 CFR

7.....6021
Proposed Rules:
242.....6466
1400.....7506

37 CFR

251.....8196, 8198
252.....8196
253.....8196
254.....8196
255.....8196
256.....8196
257.....8196
258.....8196
259.....8196, 8198
Proposed Rules:
1.....8609
3.....8609

38 CFR

3 .....6660, 9626, 9627
4.....7124

39 CFR

20.....7912
233.....8305
Proposed Rules:
111.....6047, 7154
265.....8610
3001.....8211

40 CFR

51.....7449
52 .....6022, 6027, 6401, 7124, 7453, 7713, 7715, 7913, 8306, 8563, 8565, 8566, 8943, 8948, 8949, 9778
63.....7627
70.....8772
80.....6030
81.....7124, 7453
82.....7386
93.....7449
180 .....6032, 7456, 7457, 7458, 9780, 9781, 9783
185.....9783
186.....9783
261.....7366, 7824
270.....6666
271.....7824
300.....8570, 8570
302.....7824
372.....9299
Proposed Rules:
Ch. I.....7931
51.....7508
52 .....6049, 6051, 6052, 6467, 6687, 7154, 7742, 7931, 7934, 8612, 8993, 8994, 9802, 9810
63 .....8333, 9802, 9812, 9813
70.....8335
80.....8341
81.....9813
82.....7390
86.....7404
93.....7508
180 .....6052, 7509, 8612, 8615, 9815, 9816
185.....7511
186.....7511
261.....6054, 7513
271.....7513
300 .....7934, 8212, 8616
302.....7513
430.....9813
435.....9428
761.....7742

41 CFR

101–40.....7129
201–3.....7715
201–9.....7715
201–18.....7715
201–20.....7715
201–21.....7715
201–23.....7715
201–39.....7715

42 CFR

100.....7678
410.....8951
Proposed Rules:
52a.....9560
482.....7514

43 CFR

4.....9894
12.....9786
18.....9786
1780.....9894
4100.....9894
Proposed Rules:
11.....7154, 7155
2920.....7877
8360.....7743
Public Land Orders:
7114.....8571
7115.....8956

44 CFR

64.....6034, 6035
65.....6403, 6404
67.....6407
206.....7130
Proposed Rules:
67.....6470

46 CFR

15.....8308
25.....7131
160.....7131
500.....9786
Proposed Rules:
Ch. I.....6687
381.....6067
572.....6482

47 CFR

1.....9889
2.....8309
22.....9889
24.....8571
64.....7131
73.....6670, 9628
90.....9787
97.....7459
Proposed Rules:
Ch. I.....6482, 8994
0.....8618
1.....8618, 8995
17.....8618
21.....8618
22.....8618
23.....8618
25.....8618
63.....8996
64.....8217
73 .....6068, 6483, 6490, 6689, 8618, 9001
74.....8618
78.....8618
80.....8618
87.....8618
90.....8341, 8618
94.....8618
95.....8618
97.....8618

48 CFR

31.....7133
Proposed Rules:
28.....6602
32.....6602
45.....7744
52.....6602, 7744

49 CFR

173.....7627
192.....7133
501.....9788
571 .....6411, 7461, 8199, 8202
Proposed Rules:
214.....8619
225.....9001
653.....7100
654.....7100

50 CFR

17.....6671, 6968
227.....8956
229.....6036
611 .....7288, 8470, 8479
625.....8958
642.....7134, 7716
651.....6446
663.....6039
672 .....7136, 7288, 7917, 8470, 8478
675 .....6974, 8479, 8960
676 .....6448, 7288, 8470, 8479
Proposed Rules:
Ch. VI.....7156
17 .....8342, 8620, 9484
100.....6466
222.....6977
424.....7744
611.....8114
638.....9320
646.....8620
649.....7936
650.....7936, 8622
651.....7936
652.....6977
675.....8114
676.....8114