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Monday
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–17]

Mediterranean Fruit Fly; Removal From the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Ventura County, CA, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective August 1, 1995. Consideration will be given only to comments received on or before October 6, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 91–155–17, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 91–155–17. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA. Amendments affecting the quarantined areas in California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, February 14, March 4, July 7, August 2, and October 12, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; 59 FR 2281–2283, Docket No. 91–155–11; 59 FR 7895–7896, Docket No. 91–155–12; 59 FR 11177–11180, Docket No. 91–155–13; 59 FR 35611–35612, Docket No. 91–155–14; 59 FR 40207–40208, Docket No. 91–155–15; and 59 FR 52405–52407, Docket No. 91–155–16).

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in Ventura County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on November 21, 1994. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action, there are no longer any quarantined areas in Ventura County. Portions of Los Angeles, Orange, and San Bernardino Counties remain quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Medfly could spread to noninfested areas of the United States. Because this situation no longer exists, and because the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to remove restrictions from the noninfested area.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this

action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Camarillo area of Ventura County, CA. There are approximately 74 small entities that could be affected, including 12 fruit markets, 1 farmers market, 25 nurseries, 35 fruit sellers, and 1 packer. In addition, there are growers raising approximately 35,000 acres of avocados, lemons, oranges, tomatoes, and peppers.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

Therefore, termination of the quarantine in the Ventura County area should have a minimal economic effect on the few small entities operating there. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in subpart 301.78 have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0088.

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

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

§ 301.78–3 [Amended]

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by removing the entry for Ventura County.

Done in Washington, DC, this 1st day of August 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–19434 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–34–P

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AA91

General Administrative Regulations; Late Planting Agreement Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends its General Administrative Regulations, 7 CFR part 400, by revising the applicability to crops insured provision, located at section 400.4. The intended effect of this rule is to add a crop to which the Late Planting Agreement Option will apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule for notice and comment is not required because the rule relates solely to internal agency management to update FCIC's regulations by adding the popcorn crop insurance regulations to this subpart.

This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1998.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule have been approved by OMB and assigned OMB No. 0563–0023.

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

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering this optional policy and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

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

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

Division, whichever is applicable, must be exhausted before judicial action may be brought.

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

Background

On December 10, 1993, FCIC published a final rule in the **Federal Register** at 58 FR 64872 setting out the specific crop insurance regulations to which the Late Planting Agreement Option would apply. Based on FCIC's review of this regulation, it became evident that the provisions of this subpart should be updated to include the Popcorn crop insurance regulations.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR part 400, subpart A, effective for the 1995 and succeeding crop years, to read as follows:

PART 400—[AMENDED]

1. The authority citation for 7 CFR part 400, subpart A, is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Section 400.4 is amended by adding the following entry in numerical order by CFR part number to read as follows:

§ 400.4 Applicability to crops insured.

* * * * *

7 CFR part 447, Popcorn

Done in Washington, D.C., on July 31, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19250 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–08–P

7 CFR Parts 400, 402, and 404

Request for Comments on the New Catastrophic Risk Protection Endorsement, Federal Crop Insurance Reform Act of 1994; Regulations for Implementation, Noninsured Crop Disaster Assistance Program and Reinsurance Agreement-Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rules; reopening and extension of comment periods.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this document to advise all interested parties that it is extending the time allowed for public comment and suggestions on the new Catastrophic Risk Protection Endorsement (CAT), Federal Crop Insurance Reform Act of 1994; Regulations for Implementation, Noninsured Crop Disaster Assistance Program (NAP), and the informal reconsideration process available under the Reinsurance Agreement-Standards for Approval issued for the 1995 and succeeding crop years.

On Friday, January 6, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 2000, with a request for public comment on the new CAT program regulations. Written comments, data, and opinions were required to have been submitted not later than March 7, 1995, in order to be assured of consideration.

On Friday, January 6, 1995, FCIC also published an Interim Rule in the **Federal Register** at 60 FR 1996, with a request for public comment on implementation regulations for the new Federal Crop Insurance Reform Act of 1994. Written comments, data, and opinions were required to have been submitted not later than March 7, 1995, in order to be assured of consideration.

On Thursday, May 18, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 26669, with a request for public comment on the NAP. Written comments, data, and opinions were required to have been submitted not later than July 17, 1995, in order to be assured of consideration.

On Monday, May 1, 1995, FCIC published an Interim Rule in the **Federal Register** at 60 FR 21035, with a request for public comment on the new informal reconsideration process available to reinsured companies under the Standard Reinsurance Agreement; Standards for Approval. Written comments, data, and opinions were required to have been submitted not later than June 30, 1995.

FCIC is seeking additional public comment on the regulations published with respect to the new CAT program, Reform Act Implementation Regulations, NAP, and the informal reconsideration process available under the Standard Reinsurance Agreement; Standards for Approval Regulations from all interested parties.

DATES: Written comments, data, and opinions on these interim rules should be submitted not later than August 18, 1995, in order to be assured of consideration.

ADDRESSES: Written comments, data, and opinion on these interim rules should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery should be made to 2101 L Street, N.W., suite 500, Washington, D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Telephone (202) 254–8314.

Done in Washington, DC, on August 2, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19479 Filed 8–3–95; 11:35 am]

BILLING CODE 3410–08–P

7 CFR Part 401

RIN 0563–AA84

General Crop Insurance Regulations; Late Planting Agreement Option

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends its General Crop Insurance Regulations, 7 CFR part 401, by revising the late planting agreement option provision, located at § 401.107. The intended effect of this rule is to revise the crops to which the Late Planting Agreement Option will apply.

EFFECTIVE DATE: May 1, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this rule for notice and comment is not required because the rule relates solely to internal agency management to update FCIC's regulations by revising the crops to which this part applies.

This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1997.

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

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this rule have been approved by OMB and assigned OMB No. 0563–0023.

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

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering this policy option and the procedures therein will not increase from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the insured farmer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

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

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

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

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

Background

On May 17, 1989, FCIC published a final rule in the **Federal Register** at 54 FR 21195 setting out the specific crop insurance endorsements to which the Late Planting Agreement Option would apply. Upon review of this regulation, FCIC determined that the provisions of this section should be updated to remove the wheat, barley, oat, rye and flaxseed endorsements because they are now located in the small grains crop insurance provisions under part 457 and the sunflower seed endorsement because it is now located under part 457 and to add the Tobacco (guaranteed plan) endorsement. Therefore, FCIC clarifies the availability of the Late Planting Agreement Option by amending § 401.107(e) for this purpose.

List of Subjects in 7 CFR Part 401

Crop insurance.

Final Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR part 401, effective for the 1995 and succeeding crop years, to read as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 is continues to read as follows:

Authority: 7 U.S.C. 1506(l).

2. Section 401.107 is amended by revising paragraph (e) to read as follows:

§ 401.107 Late planting agreement option.

* * * * *

(e) *Applicability to crops insured.* (1) The provisions of this section for insuring crops for the 1995 and subsequent crop years will be applicable only under the following endorsements:

401.114 Canning and Processing Tomato Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.123 Safflower Seed Endorsement.
401.126 Onion Endorsement.
401.129 Tobacco (guaranteed plan) Endorsement.

(2) The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

Done in Washington, D.C., on July 31, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–19249 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–08–P

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV95–905–2FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, this provisions of the interim final rule which authorized expenses and established an assessment rate for the 1994–95 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administration Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: Effective August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or William Pimenthal, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (813) 299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1995–96 fiscal year, beginning August 1, 1995, through July 31, 1996. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the Committee and submitted to the Department for approval. The Committee members are handlers and producers of Florida citrus. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The annual budget and assessment rate are usually recommended by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee met May 23, 1995, and unanimously recommended expenses of $215,000 for the 1995–96 fiscal year, with an assessment rate of $0.00325 per ⅘ bushel carton of fresh fruit shipped.

In comparison, 1994–95 budget expenses were $210,000 with an approved assessment of $0.003. Thus, for the 1995–96 fiscal year, expenses are being increased $5,000 and the assessment rate is being increased $0.00025 from the levels established in 1994–95.

The assessment rate, when applied to anticipated shipments of 66,000,000 cartons of assessable fruit, will yield a total of $214,500 in assessment income. Interest income for 1995–96 is estimated at $3,500. Income will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $100,000, will be within the maximum permitted by the order of approximately one-half of one fiscal year's expenses.

Major expense categories for the 1995–96 fiscal year include $101,740 for salaries, $36,000 for the Manifest Department, and $13,350 for insurance and bonds.

The Committee budget was authorized by an interim final rule issued on June 22, 1995, and published in the **Federal Register** [60 FR 33329, June 28, 1995]. A 30-day comment period was provided for interested persons. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1995–96 fiscal year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 905

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

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule that revised 7 CFR part 905 which was published at 60 FR 33329 on June 28, 1995, is adopted as a final rule without change.

Dated: July 31, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19328 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 931

[Docket No. FV95–931–1IFR]

Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by September 6, 1995, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–720–5127; or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, Room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended [7 CFR Part 931], regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears handled during the 1995–96 fiscal year which began July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1994–95 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 1, 1995, and unanimously recommended total expenses of $92,254 with an assessment rate of $0.02 per standard box or equivalent for the 1995–96 fiscal year. In comparison, 1994–95 budgeted expenses were $96,410, with an approved assessment rate of $0.02 per standard box or equivalent. This

represents a $4,156 decrease in expenses, and no change in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated pear shipments of 3,152,300 standard boxes or equivalent, will yield $63,046 in assessment income. Assessment income, combined with $4,000 from other income sources, and $25,208 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $25,208 from the Committee's authorized reserve fund will result in no reserve remaining at the end of the 1995–96 fiscal year.

Major expense categories for the 1995–96 fiscal year include $44,135 for salaries, $9,195 for unshared contingency, and $4,989 in employee health benefits.

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

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

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year began on July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Bartlett pears handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. A new § 931.230 is added to read as follows:

§ 931.230 Expenses and assessment rate.

Expenses of $92,254 by the Northwest Fresh Bartlett Pear Marketing Committee, are authorized, and an assessment rate of $0.02 per standard box or equivalent of assessable pears is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19329 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 981

[FV94–981–3FIR]

Almonds Grown in California; Release of the Reserve Established for the 1994–95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule relaxing volume regulations imposed on California almond handlers for the 1994–95 crop year by releasing reserve almonds into salable channels. Volume regulations were imposed under the authority of the Federal marketing order which regulates the handling of almonds grown in California and is locally administered by the Almond Board of California (Board). During the 1994–95 season, handlers were required to withhold as a reserve, from normal competitive markets, 10 percent of the almonds which they received from growers. The remaining 90 percent of the crop could be sold by handlers to any market at any time. The interim final rule relaxed these regulations on handlers by releasing the reserve percentage to the salable category and was necessary to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

DATES: Effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, or fax (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or fax (209) 487–5906.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the ''order,'' regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable and reserve percentages may be established for almonds during any crop year. This rule revises the salable and reserve percentages for marketable California almonds during the 1994–95 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule finalizes the relaxation of volume regulations imposed on California almond handlers for the 1994–95 crop year (July 1 through June 30). During the 1994–95 season, handlers were required to withhold, from normal domestic and export markets, 10 percent of the merchantable almonds which they received from growers (reserve percentage). The remaining 90 percent of almonds received by handlers could be sold to any market at any time (salable percentage). Volume regulations were recommended by the Board and imposed on handlers to lessen the impact of a large almond supply for the 1994–95 season. Salable and reserve percentages were established through publication of a final rule in the **Federal Register** on December 9, 1994 [59 FR 63693]. On May 12, 1995, the Board determined that volume regulations on almond handlers were no longer necessary and recommended that the entire reserve be released to provide a sufficient quantity of almonds to meet anticipated trade demand and carryover needs.

The interim final rule was issued on May 25, 1995, and published in the **Federal Register** (60 FR 28520, June 1, 1995), with an effective date of May 25, 1995. That rule provided a 30-day comment period which ended July 3, 1995. No comments were received.

Section 981.47 of the almond marketing order provides authority for the Secretary, based on recommendations by the Board and the analysis of other available information, to establish salable and reserve percentages for almonds during a crop year. To aid the Secretary in fixing the salable and reserve percentages, section 981.49 of the order requires the Board to submit information to the Department on estimates of the marketable production of almonds, combined domestic and export trade demand for the year, carryin inventory at the beginning of the year, and the desirable carryover inventory at the end of the year. Authority for the Board to recommend revisions in the volume regulation percentages is provided in section 981.48 of the order. Such revisions must be recommended by May 15.

The Board met in July of 1994 to review projected crop estimates and marketing conditions for the 1994–95 almond season. A very large crop of 640 million kernelweight pounds was projected for the season. Estimated shipments for the two prior seasons were 535.9 million pounds for 1992 crop almonds and 497.7 million pounds for 1993 crop almonds.

Variations in production from season-to-season can cause wide fluctuations in prices. For example, the Board estimated that grower prices increased from $1.26 per pound for 1992 crop almonds to $2.00 per pound for the smaller, 1993 crop almonds. The large 1994 California almond crop estimate caused early speculation of grower prices in the $1.15 per pound range. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers. The long term goal of the almond industry is to increase almond consumption and demand, and the Board believes this is best achieved in the presence of stable and orderly market conditions. Thus, the Board recommended that the volume regulation provisions of the order be utilized for the 1994–95 season as a supply management tool, with 10 percent of the 1994 crop almonds being held by handlers as a reserve.

On May 12, 1995, the Board met in Modesto, California, and unanimously recommended releasing the reserve established for the 1994–95 crop year. Thus, the salable percentage will increase from 90 to 100 percent and the reserve percentage will decrease from 10 to 0 percent. The Board considered a number of factors in arriving at its recommendation to release the reserve. The 1994–95 almond crop is now estimated at 727 million pounds, far above the initial 640 million pound estimate. Shipments for the year are expected to exceed 600 million pounds. Further, it appears that production in the rest of the world is well below normal. Production in Spain, the world's second largest producer of almonds, fell well below usual and is estimated to have been about 75 million pounds. Spain, California's biggest competitor in the world almond markets, became the United States' fourth largest export market.

At the meeting, the Board also considered a crop estimate for California almonds for the 1995–96 season provided by the California Agricultural Statistics Service (CASS). That forecast is based on a survey of 200 growers. CASS released its crop estimate of 430 million kernelweight pounds on May 11. The estimate is relatively small compared with normal almond production for a year. An extremely wet spring that prohibited successful pollination of almond trees during the critical bloom period as well as crop losses due to trees having been blown over by high winds have resulted in the predicted small yield in California. Very short carryin inventories of 1993 crop almonds into the current season combined with reduced production from California competitors resulted in higher than anticipated demand for California almonds.

On June 28, 1995, CASS released another forecast, which is based on actual almond counts from across the State. This forecast for the 1995–96 crop year is 310 million kernelweight pounds of almonds, 120 million pounds less than estimated in the previous estimate. Although this forecast was not available when the Board recommended releasing the reserve, this estimate further supports releasing the reserve.

As required under the order, the Board revised a number of estimates that had been considered when volume regulation was first recommended in July 1994. The Board's current estimates of marketable supply, combined domestic and export trade demand for 1994–95, and desirable carryover to be available for the 1995–96 crop year are shown below. The Board considered these revised estimates in arriving at its recommendation to release the 1994–95 reserve. The estimates used by the Board to establish the original volume regulations for the year are shown for comparison.

MARKETING POLICY ESTIMATES—1994 CROP

[Kernelweight basis in millions of pounds]

	12/9/94 Initial estimates	5/12/95 Revised estimates
Estimated Production:		
1. 1994 Production	640.0	727.1
2. Loss and Exempt—3.0%	19.2	21.8
3. Marketable Production	620.8	705.3
Estimated Trade Demand:		
4. Domestic	175.0	152.8
5. Export	381.4	449.0
6. Total	556.4	601.8
Inventory Adjustment:		
7. Carryin 7/1/94	99.6	102.6
8. Desirable Carryover 6/30/95	100.0	206.1
9. Adjustment (Item 8 minus item 7)	0.4	103.5
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9)	556.8	705.3
11. Reserve (Item 3 minus item 10)	64.0	0
12. Salable % (Item 10 divided by item 3×100)	[1] 90	100.0
13. Reserve % (100% minus item 12)	[1] 10	0

[1] Percent.

As previously mentioned and reflected in the table, estimated almond crop production for the 1994–95 season increased from 640 to 727.1 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also increased from 19.2 to 21.8 million kernelweight pounds. Therefore, marketable production is expected at 705.3 million kernelweight pounds.

The Board's estimated trade demand (or shipments) also increased from 556.5 million kernelweight pounds to a total of 601.8 kernelweight pounds. If the estimates are achieved, this would set a new record for the California almond industry. Although estimated domestic trade demand decreased from 175 to 152.8 million kernelweight pounds, estimated export trade demand increased sharply from 381.4 to 449 million kernelweight pounds. Almond production in the rest of the world was well below normal, contributing to a significant increase in the amount of California almonds shipped into export markets.

The Board also revised its inventory estimates. The carryin figure—supplies of salable almonds carried in from the 1993–94 crop year—was slightly revised from 99.6 to 102.6 million kernelweight pounds. The desirable carryout figure—supplies of salable almonds to be carried out on June 30 for early season shipment during the 1995–96 crop year—was revised from 100 to 206.1 million kernelweight pounds. With the projected short crop for the upcoming season, the carryout figure was significantly increased to provide a more adequate supply of almonds available to meet early market needs. After taking into account the carryin and desirable carryover figures, the adjusted trade demand was increased from 556.8 to 705.3 million kernelweight pounds, an amount equal to the Board's estimate of marketable production.

The order also permits the Board to recommend the establishment of a percentage of reserve almonds that can be exported. However, export is currently the largest market for California almonds and is not considered a secondary or noncompetitive outlet. For the 1994–95 crop year, exports were included in the trade demand and the export market was not an authorized reserve outlet. The percentage of reserve almonds available for export was established at 0 percent in the final rule previously cited that established volume regulation for the 1994–95 crop. The export percentage is not changed as a result of this action.

The Board believed that immediate release of the reserve will positively impact market stability by increasing the amount of almonds available to the market prior to the harvest of the 1995 crop, and by augmenting the overall supply available for the upcoming season. The interim final rule is expected to facilitate a smooth transition into the 1995–96 season. Since market stability is of paramount importance in achieving long-term industry health, the Board concluded that there are no viable alternatives to its recommendation.

This rule is not expected to impose any additional costs on handlers or producers because release of the reserve will eliminate the need for handlers to store almonds and will allow the product to enter an eager market in a smooth fashion. Therefore, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, including the Board's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (60 FR 28520, June 1, 1995) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

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

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 60 FR 28520 on June 1, 1995, is adopted as a final rule without change.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19326 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 982

[Docket No. FV95–982–1IFR]

Filberts/Hazelnuts Grown in Oregon and Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1995–96 marketing year. Authorization of this budget enables the Filbert/Hazelnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1995, through June 30, 1996. Comments received by September 6, 1995, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-Washington filberts/hazelnuts are subject to assessments. Funds to administer the Oregon-Washington filbert/hazelnut order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable filberts/hazelnuts during the 1995–96 marketing year which began July 1, 1995, and ends June 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of Oregon and Washington filberts/hazelnuts under this marketing order, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon and Washington filbert/hazelnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 marketing year was prepared by the Filbert/Hazelnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by the expected quantity of assessable filberts/hazelnuts handled. Because that rate will be applied to the actual quantity of filberts/hazelnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board, in a mail vote, unanimously recommended a 1995–96 budget of $483,685, $23,325 less than the previous year. Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Personal services (salaries), $50,735 ($48,000), postage, $3,000 ($1,800), communications, $1,200 ($1,100), printing and publishing, $2,400 ($2,300), insurance, $700 ($650), rent, $5,650 ($5,560), utilities, $850 ($800), equipment maintenance and rental, $1,500 ($1,400), and office supplies, $2,000 ($1,500). Items which have decreased compared to those budgeted for 1994–95 (in parentheses) are: Computer services, $750 ($1,500), furniture, $250 ($1,500), equipment, $250 ($1,500), and research ($25,000) for which no funding was recommended this year. All other items are budgeted at last year's amounts, including $250,000 for promotion.

The Board also unanimously recommended an assessment rate of $0.007 per pound, the same as last year. This rate, when applied to anticipated shipments of 60,000,000 pounds, will yield $420,000 in assessment income. This, along with $5,000 in interest income, $2,572 from the Nut Growers Society in payment for services performed by the Board under an agreement with the Society, and $56,113 from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1995–96 marketing year, estimated at $235,691, were within the maximum permitted by the order of one marketing year's expenses.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the marketing year began on July 1, 1995, and the marketing order requires that the rate of assessment for the marketing year apply to all assessable filberts/hazelnuts handled during the marketing year; (3) handlers are aware of this action which was unanimously recommended by the Board in a mail vote and is similar to other budget actions issued in past

years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. A new § 982.339 is added to read as follows:

§ 982.339 Expenses and assessment rate.

Expenses of $483,685 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate of $0.007 per pound of assessable filberts/hazelnuts is established for the marketing year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19327 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 984

[Docket No. FV95–984–1FR]

Walnuts Grown in California; Suspension of Deadline for Relaxing Reserve Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This document suspends the deadline by which the Walnut Marketing Board (Board) may recommend a relaxation in reserve requirements established for a marketing year under the walnut marketing order. Suspension of the deadline will allow the Board, which locally administers the order, to make such a decision based on more current supply and shipment information. This suspension will provide the walnut industry an opportunity for more orderly marketing.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX (209) 487–5906; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2526–S, P.O. Box 96456, Washington, D.C. 20050–6456; telephone: (202) 720–3610, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This suspension order is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California walnuts who are subject to regulation under the walnut marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of California walnut handlers and producers may be classified as small entities.

The walnut marketing order provides authority for volume control in the form of free, reserve, and export percentages. The free percentage is the percentage of certified merchantable walnuts that may be shipped freely to any market during the marketing year. The reserve percentage is the amount of certified merchantable walnuts that may be shipped to export markets, government agencies, charitable institutions, poultry or animal feed, walnut oil, or other markets noncompetitive with markets for certified merchantable free walnuts. The export percentage is the percentage of reserve walnuts that may be shipped to export markets. Certified merchantable walnuts are walnuts which have been inspected and certified by the Dried Fruit Association of California as meeting the minimum grade and size requirements specified under the order.

The marketing order also provides that handlers may meet their reserve requirements by either delivering reserve walnuts to the Board for disposition by the Board or by selling or disposing of their own walnuts, as agents of the Board, in specified reserve outlets. Any reserve walnuts the Board receives would be pooled and sold by the Board in markets specified for reserve walnuts at the highest returns available. The proceeds from the sale of pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to handlers who delivered walnuts to the pool in proportion to each handler's contribution.

In a marketing year (August 1–July 31) that a reserve program is implemented,

the Board recommends the initial percentages in September and has the option of recommending an increase in the free and export percentages and a decrease in the reserve percentage later in the marketing year. If the Department concurs with the Board's recommendation, the recommended percentages may be established or modified.

Section 984.49(b)(1) establishes a deadline of February 15 for the Board to recommend to the Secretary an increase in the free percentage and a decrease in the reserve percentage. On February 10, 1995, the Board unanimously recommended suspension of that deadline. This action will suspend the phrase ''On or before February 15 of the marketing year,'' in section 984.49(b)(1) and will authorize the Board to recommend an increase in the free percentage and a decrease in the reserve percentage at any time during the marketing year, which ends on July 31.

In the past, many export markets were undeveloped and the domestic market provided better returns than export markets. The reserve percentage was used as a tool to keep the domestic walnut market from being oversupplied and the export percentage was used as a tool to place an orderly flow of California walnuts into the export market at prices that were competitive with foreign walnuts. Even though the free walnuts were allowed to be shipped to export markets, free walnuts were not price competitive with walnuts from other countries and consequently were not diverted to export markets. Under former marketing conditions, sufficient information relating to the domestic market was available prior to February 15 so that the Board could make an appropriate recommendation for final free and reserve percentages.

Under present marketing conditions, walnut export markets are well established and have returns equal to or higher than those received in the domestic market. As a result, the Board can recommend setting an export percentage of 0 percent which will preclude the shipment of reserve walnuts to export markets. The export market will then be supplied with only free walnuts. By setting a reserve percentage and keeping the export percentage at 0 percent, the Board can remove a quantity of walnuts in excess of domestic and export market demands.

When large shipments of reserve walnuts were exported, the February 15 deadline for recommending a decrease in the reserve gave handlers approximately five months to export the remainder of their reserve after the final reserve percentage was known. Since exports have now become a viable market for free walnuts, the Board may need more flexibility to consider later data on free shipments to revise its estimate of trade demand. The Board may also need more flexibility to consider the July forecast of the next crop to decide if the desirable carryout should be increased to supplement a short crop.

In addition, the order requires handlers to file monthly shipment reports that are due on the fifth day of the following month. Each additional monthly report the Board receives from handlers after the February 15 deadline, gives the Board a more accurate picture of the levels of shipments of walnuts for the current marketing year. More information is also available at that time on the foreign walnut crop, the pecan supply which directly, competes with walnuts, exchange rates, and foreign and domestic economic conditions. This information will allow the Board to better estimate the current and prospective domestic and export demand and supply conditions for California walnuts. Finally, later in the marketing year, the Board can better estimate the amount of the current crop of walnuts that should be carried over to the next marketing year. By allowing decisions to be made later in the season on a reserve program, the industry can better evaluate marketing conditions.

The Board estimates that sufficient information will be available by early June, but marketing conditions may cause the Board to wait longer before making a final recommendation on the free and reserve percentages. The suspension of the February 15 deadline will allow the Board more flexibility in dealing with the dynamic marketing conditions of the California walnut industry and in turn provide for more orderly marketing of walnuts.

A proposed suspension order was published in the **Federal Register** on June 2, 1995, (60 FR 28744). That action provided a 30-day comment period which ended on July 3, 1995. No comments were received.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, it is determined that, under the conditions presently existing in the walnut industry, the February 15 deadline in section 984.49(b)(1) does not tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 533) because: (1) The Board will meet September 1995 to consider the need for volume control during the 1995–96 marketing year; (2) preliminary industry discussions on the need for volume control during 1995–96 are expected to begin soon and prompt implementation of the suspension will foster more meaningful discussions; (3) the industry is aware of this action, which was unanimously recommended by the Board at a public meeting and all interested persons in attendance were given the opportunity to provide input; and (4) interested persons were given the opportunity to submit written comments on the suspension of the February 15 deadline and none were received.

List of Subjects in 7 CFR Part 984

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

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 984.49 [Suspended in part]

2. In § 984.49 paragraph (b)(1), the words ''On or before February 15 of the marketing year,'' are suspended.

Dated: July 31, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 217, 235, 264, 286

[INS No. 1603–93]

RIN 1115–AD30

Charging of Fees for Services at Land Border Ports-of-Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations to allow the Immigration

and Naturalization Service (the Service) to charge a fee for the processing and issuance of specified documents at land border Ports-of-Entry (POEs). The fees are necessary to cover the costs of providing these services which benefit certain applicants at land border POEs. The revenue generated by the collection of fees for these application-processing services will enable the Service to improve service to the public at land border POEs.

EFFECTIVE DATE: October 9, 1995.

FOR FURTHER INFORMATION CONTACT: Marie De Soto, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, telephone (202) 514–1798.

SUPPLEMENTARY INFORMATION:

General

The Service published a proposed rule on April 12, 1994, at 59 FR 17283, to amend the regulations to allow the Service to charge a fee for processing and issuing specified documents at land border Ports-or-Entry (POEs). Consistent with 31 U.S.C. 9701 and OMB Circular A–25, User Charges, the proposed rule identified application services that currently are provided free-of-charge and for which it would be appropriate to impose a fee. The services identified are tasks commonly performed in secondary inspection such as examining documents, conducting record checks, and interviewing applicants in order to issue permits for extended stays in the United States. In addition, the services provides to applicants-for-admission at POEs, border crossing cards and boating permits; documents that may require extensive interviews, record checks, document production, and other time-consuming paperwork. Specifically, the proposed rule included fees for the processing of Form I–94, Arrival/Departure Record; Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form; Form I–444, Mexican Border Visitors Permit; Form I–68, Canadian Border Boat Landing Permit; Form I–175, Application for Nonresident Alien Canadian Border Crossing Card for issuance of Form I–185, Nonresident Alien Canadian Border Crossing Card (CBCC); and Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, to replace a lost, stolen, or mutilated Nonresident Alien Border Crossing Card (BCC), Form I–586.

All interested parties were invited to submit comments on the proposed rule by June 13, 1994. The Service received 22 comments and considered each of the comments in preparing the final rule. Commenters included private individuals, Chambers of Commerce, local government representatives, small business owners, members of Congress, and Service employees. Since most discussed several issues, the total number of comments exceeds the number of persons who commented.

Discussion of Comments

Support for Fees

Eight of the commenters expressed general support for fees for services, with recommendations that the revenues be used to address the illegal immigration problem in the United States. The fees were set to recover only the costs associated with providing the document-processing services and related benefits to certain land border crossing applicants. The revenues generated by these fees are to be used for the purpose of funding the costs incurred to provide these application processing services. It is anticipated that the implementation of the fees-for-services charge will enable the Service to improve inspection services at the land border. Once the fee revenues are available, appropriated resources formerly allocated to fund these document-processing services may be redirected to augment staffing of vehicle and pedestrian traffic lanes at land border Ports-of-Entry. The resulting benefit would be improved facilitation of traffic through the POEs.

One commenter proposed that in addition to charging for the Form I–190 to replace a lost, stolen, or mutilated Form I–586, a $4.00 fee be imposed for a temporary border crossing card pending issuance of the Form I–586. Another commenter suggested that the fee for the Form I–68 should be higher and that a $25.00 charge was more appropriate and comparable with a Canadian fee for inspecting United States boats. While the Service recognizes the concerns of the commenters, any additional fees beyond those that were in the proposed rule would have to be the subject of a separate rule. Increasing the fee for the Form I–68 from $16.00 to $25.00 would not be consistent with Federal user fee statutes and regulations which require that the fee be set to recover the full costs of providing the services. A cost analysis of the services provided, including the indirect costs associated with these services, resulted in the fees, as established. The Service will conduct periodic reviews of the fees, changes to issuance procedures, and methods used in determining fees and, when warranted, adjustments to the fees will be made.

Justification for Fees

Two commenters suggested that the Government should be required to provide service to the public, and that to charge individuals for that service is not necessary or warranted. On the contrary, the Federal user fee statute (31 U.S.C. 9701) and regulations require that recipients of special benefits bear the costs of providing those services. The Office of Management and Budget (OMB) Circular A–25, User Charges, states as a general policy that reasonable charges should be imposed to recover the full cost to the Federal Government of rendering such services. In July 1993, the Office of the Inspector General completed an audit of services performed and special benefits provided by the Service. This audit disclosed a number of services currently being provided free-of-charge by the Service for which it would be appropriate to impose a fee including the Canadian Border Boat Landing Permit, Form I–68, and applications for Border Crossing Cards, Forms I–190 and I–175. The audit concluded that the Service was not in compliance with OMB directives with regard to these services, and that failure to collect fees for services resulted in the cost being paid by the general public out of the general fund appropriation. In an effort to comply with federal directives, the Service determined which services and benefits are currently provided without charge to certain beneficiaries and for which it would be appropriate to impose a fee, culminating in this rule.

Two commenters, objecting to the fee for Form I–68, stated that, if boaters refuse to obtain Form I–68 because of the fee, the Service will be forced to provide additional personnel and facilities where none exist to inspect boaters upon arrival in the United States. However, pursuant to 8 CFR 100.4, persons entering the United States may only present themselves to an immigration officer at those ports designated as Class A Ports-of-Entry at a time when the port is open for inspection.

The I–68 provision is the only exception to this reporting requirement. The provision extends to boaters the opportunity of recreational boating without reporting for inspection during each outing. A boater who refuses to obtain Form I–68 is otherwise required to expend the time, expense, and effort to report to an open, staffed POE.

The I–68 is clearly a specific benefit that the Service provides to an identifiable recipient, as defined by

Federal user fee statute and OMB Circular A–25, User Charges. It is a benefit for which the Service is required to charge a fee. However, participation in the I–68 program is voluntary.

Each boating season, in order to make this benefit easily available, inspectors travel to boat shows, marinas, and other gatherings to issue the Form I–68. The Service's districts mount publicity campaigns to educate boaters about these requirements. The purpose of the Form I–68 fee is to recover the costs of providing these services and this special benefit to boaters, since funding is insufficient for additional personnel and new facilities, and there are no other resources available to support port expansion.

Use of Revenues

One commenter expressed concern that there was no guarantee that the money generated from these collections would be applied to efforts to deal with illegal immigration. The Service recognizes the concern of the commenter; however, consistent with the mission of the Service, inspectors at POEs have a very important dual role: that of facilitating the entry of bona fide applicants-for-admission, and that of enforcing the immigration laws by detecting inadmissible applicants and those attempting entry by fraud. The Service will use the revenue generated from the fees contained in this rule to fund the costs incurred to improve the secondary application-processing services provided at land border POEs. Consequently, the Service intends to devote appropriated resources formerly expended for secondary application-processing services to staffing of vehicle and pedestrian traffic lanes at land border Ports-of-Entry. This overall increase in resources will allow the Service to better meet its mission of facilitating the entry of bona fide applicants-for-admission, providing better service to the traveling public at land border POEs, and enforcing the immigration laws by detecting inadmissible applicants and those attempting entry fraud.

Another commenter stated that the income should return to the port where it was generated. The fees have been set, to recover not only costs incurred directly at ports, but also costs—both direct and indirect—incurred by the Service for services provided to applicants-for-admission at land border POEs in connection with the six application forms described in this rule. Among the costs identified are a portion of the salaries and expenses of the port inspectors, the cost of training the inspectors, data processing, production of forms and documents, safeguarding and accounting for the fees collected, and performing record and background checks. Consequently, the fees collected pursuant to this rule are to be used to offset the cost to all Service components, including ports, of providing these application-processing service at all land border POEs. The Service has developed a comprehensive staffing model geared to the unique requirements of land border facilities which incorporates data from each land border POE on vehicle and pedestrian traffic, projected growth, facility expansion, and other items affecting inspection service. Using the model, the Service will be able to properly allocate resources.

Northern and Southern Border Disparities

One commenter wondered why fees are only being charged to those who cross the United States-Mexico border, and not to those who cross from Canada or travel by air from other countries. The fees described in this rule affect land border crossers at both the northern and southern borders. Two of the six forms for which fees are charged, the Form I–94 and the Form I–94W, are alien control documents issued to nonimmigrant aliens of any nationality who seek admission to the United States at either the northern or southern border. Fees for the two border crossing documents are the Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, and the Form I–175, Application for Nonresident Alien Canadian Border Crossing Card. The remaining two fees are for the issuance of permits which, in the case of the Form I–444, Mexican Border Visitors Permit, is beneficial only to Mexican nationals, and in the case of the Form I–68, Canadian Border Boat Landing Permit, benefits Canadians, United States citizens, and other qualified applicants. This rule applies only to land border crossers; however, air travelers arriving at air POEs currently pay a fee.

Two commenters questioned the inequity of requiring the issuance of BCCs for Mexican nationals but not for Canadians. The differences in documentary requirements between Mexican and Canadian nationals are complex, far-reaching, and beyond the scope of this rule. Generally, nonimmigrant visa requirements imposed upon aliens of certain countries are based on treaties and the corresponding regulations of both the Department of State and the Service. Under the existing provisions, Canadian nationals are, for most nonimmigrant categories, visa-exempt while Mexican nationals are not exempt. A BCC is an acceptable form of documentation, but it is not a required document. When entering the United States across a land border, the BCC generally provides a greater convenience to the holder than a regular nonimmigrant visa because a passport is not necessary. The issuance of BCC's is a benefit that the Service elects to provide to nonimmigrants who routinely cross the border. The Form I–586, Nonresident Alien Mexican Border Crossing Card, offers the same privileges as the nonimmigrant visa for a Mexican national seeking entry as a visitor for business (B–1) or pleasure (B–2). Alternatively, a Mexican national may apply, without charge, to an American Consulate in Mexico for a nonimmigrant visa.

Four commenters stated that implementation of a fee for Form I–68 will have an adverse impact on relations with our Canadian neighbors; however, none of the commenters explained in exactly what way this would interfere with good relations. Since the Canadian Government also plans to implement fees for many of the services it provides, an element of reciprocity exists, and there is no clear, disparate treatment on either side of the border.

Economic Impact of Fees

One commenter stated that user fees are inconsistent with the intent of the North American Free-Trade Agreement (NAFTA) to eliminate barriers to trade, and two commenters stated that fees would have a negative impact on the economies of the communities along the southern border. Facilitation of travel between NAFTA countries is of great concern to the Service. Traffic congestion at POEs, where vehicles sometimes wait hours to cross the border, costs local economies tremendous amounts of revenue in lost time and productivity, as well as severely impacting the environment. One way that this congestion can be alleviated is though additional personnel and the implementation of automated technology to expedite the services provided. Individuals traveling within 25 miles of the southern border area for short periods of time will not be affected by the fees. Only those traveling more than 25 miles or staying for longer than 72 hours will require issuance of an entry permit and payment of a fee. The revenues collected will allow the Service to recover the costs for providing the services. Article 1603.4 of the NAFTA states that each party shall limit any fees for processing applications for temporary entry of business persons to

the approximate costs of services rendered. Therefore, the Service believes that these fees are not inconsistent with the terms of the NAFTA.

Three commenters felt that imposition of a fee for Form I–68 would cause economic hardship to the communities along the United States/Canada border. The Service does not agree with the comment and believes that the annual fee is nominal for the benefit that is derived. The Service is required to recover the costs of providing this benefit inasmuch as the Federal user fee statute and regulations require that recipients of special benefits bear the costs associated with providing the specific services. The Service does not expect the fee to significantly deter boaters from obtaining a permit so they may land and enjoy the amenities offered in nearby communities.

Reasonableness of Fee

Two commenters stated that the fee for Form I–68 will impose an economic burden on the individuals requiring the form, who already pay many other taxes and fees, and one commenter felt the fee was unreasonable. The fees included in this rule are not excessive, and are considerably lower than many similar fees charged by Federal, state, and local governments for similar services.

Most of the fees, once paid, allow the applicant to avail him or herself of the benefit for an extended period of time. The CBCC, at $30, is currently valid indefinitely, and the replacement BCC, at $26, is valid for 10 years. The Form I–68, at $16, allows entry for 1 year, and the Form I–94W at $6, is issued for a period of 90 days. The Form I–94, depending on the nonimmigrant classification under which the applicant is entering, may be valid for years, with the normal visitor for pleasure being granted a minimum of 6 months for a fee of $6. The Form I–444, with a fee of $4, may be issued for a period not to exceed 30 days.

In addition, the Service has adopted a family cap. Formerly, Forms I–444 and I–68 allowed multiple family members, and unrelated individuals traveling in a group, to apply on one form. The family cap essentially allows children the benefit without a fee so as not to impose an undue burden on families traveling across the southern border for short periods of time, and on families enjoying recreational boating along the northern border.

As stated previously, the fees were determined by an analysis of document-processing services and associated costs, and are calculated to recover the direct and indirect costs to the Service of providing these special services and benefits.

One commenter stated that there is no reason for a United States citizen to pay to obtain Form I–68, since there is no penalty for failure to report for immigration purposes, and that those who do obtain Form I–68 do so only to appear to comply with a non-existent immigration inspection requirement. Although United States citizens are not subject to the immigration laws, the regulations at 8 CFR 235.1 require that application to enter the United States must be made in person to an immigration officer at a United States POE at a time when the port is open for inspection. This section also states that a person claiming United States citizenship must establish that fact to the examining immigration officer. That is why United States citizens are specifically included in the I–68 regulations. While criminal prosecution, loss of citizenship, or deportation will not apply to a United States citizen who has not complied with inspection requirements, the potential inconvenience in establishing that he or she is not subject to the immigration laws if encountered by Service enforcement officers may prove to be significant to most law-abiding boaters and render obtaining the I–68 worthwhile.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The fees proposed in this rule, calculated to cover only the costs of providing the service, are nominal, and will apply only to individuals, not small entities.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under E.O. 12866, section 3(f), Regulatory Planning and Review. Although this rule requires user fees, the fees are necessary to recover the cost to the Federal Government for processing and issuing specified documents at United States land border Ports-of-Entry for business and pleasure. Title 31 U.S.C. and OMB Circular A–25 require that recipients bear the cost of receiving special benefits. As such, a cost analysis of the INS services provided and associated indirect cost resulted in the fees established herein, which are consistent with Federal user fee statutes and regulations and do not exceed the full cost that may be recovered by the Service.

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this 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 addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

Paperwork Reduction Act

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

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

8 CFR Part 217

Aliens, Passports and visas.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Port-of-entry.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

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

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

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

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, the following forms to the list of forms, to read as follows:

§ 103.7 Fees.

(b) * * *

(1) * * *

Form I–68. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act—$16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be $32.00.

* * * * *

Form I–94. For issuance of Arrival/Departure Record at a land border Port-of-Entry—$6.00.

Form I–94W. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act—$6.00.

* * * * *

Form I–175. For issuance of Nonresident Alien Canadian Border Crossing Card (Form I–185)—$30.00.

Form I–190. For issuance of replacement Nonresident Alien Mexican Border Crossing Card (Form I–586) in lieu of one lost, stolen, or mutilated—$26.00.

* * * * *

Form I–444. For issuance of a Mexican Border Visitors Permit issued in conjunction with presentation of a Mexican Border Crossing Card or multiple-entry B–1/B–2 nonimmigrant visa to proceed for a period of more than 72 hours but not more than 30 days and to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas—$4.00. The maximum amount payable by a family (husband, wife, children under 21 years of age, and parents of either husband or wife) shall be $8.00.

* * * * *

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

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

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

4. Section 212.6 is amended by revising paragraph (e) to read as follows:

§ 212.6 Nonresident alien border crossing cards.

* * * * *

(e) *Replacement.* If a nonresident alien border crossing card has been lost, stolen, mutilated, or destroyed, the person to show the card was issued may apply for a new card as provided for in this section. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application for the replacement card. The holder of a Form I–185, I–186, or I–586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

* * * * *

PART 217—VISA WAIVER PILOT PROGRAM

5. The authority citation for part 217 continues to read as follows:

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

6. Section 217.2 is amended by revising paragraph (c) to read as follows:

§ 217.2 Eligibility.

* * * * *

(c) *Applicants arriving at land border Ports-of-Entry.* Any applicant arriving at a land border Port-of-Entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border Port-of-Entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I–94W, nonimmigrant Visa Waiver Arrival/Departure Form.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

7. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

§ 235.1 [Amended]

8. In § 235.1, paragraph (e) is amended by revising the phrase ''without application or fee,'' in the first sentence to read: ''upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter,''.

9. In § 235.1, paragraph (f)(1) introductory text, paragraph (f)(2), and paragraph (g)(1) are revised to read as follows:

§ 235.1 Scope of examination.

* * * * *

(f) * * *

(1) *Nonimmigrants.* Each nonimmigrant alien, except as indicated below, who is admitted to the United States shall be issued a completely executed Form I–94 which must be endorsed to show: Date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I–94 which is valid for any number of entries during the validity of the form. A nonimmigrant alien entering the United States at a land border Port-of-Entry who is issued Form I–94 will be charged a fee as prescribed under § 103.7(b)(1) of this chapter. In the case of a nonimmigrant alien admitted with the classification TN (Trade, North American Free Trade Agreement (NAFTA)), the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I–94, and the name of the employer shall be noted on the reverse side of both the arrival and departure portions of Form I–94. The departure portion of Form I–94 shall bear the legend ''multiple entry.'' A Form I–94 is not required by:

* * * * *

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94 which must include:

(i) Date and place of parole;

(ii) Period of parole; and

(iii) Conditions under which the alien is paroled into the United States. A fee shall not be required for Form I–94 when it is issued for the purpose of paroling an alien into the United States.

(g) *Mexican Border Visitors Permit, Form I–444.* (1) Any Mexican national exempt from issuance of a Form I–94 under paragraph (f)(1) (iii) or (iv) of this section shall be issued a Mexican Border Visitor's Permit, Form I–444, whenever:

(i) The period of admission sought is more than 72 hours but not more than 30 days; or

(ii) The applicant desires to travel more than 25 miles from the Mexican border but within the 5-state area of Arizona, California, Nevada, New Mexico, or Texas. A separate Form I–444 will be issued for each applicant for admission and a fee as prescribed under § 103.7(b)(1) of this chapter shall be charged for each applicant, or until the family cap is reached.

* * * * *

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

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

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

11. A new § 264.4 is revised to read as follows:

§ 264.4 Application to replace a Nonresident Alien Border Crossing Card.

An application for a replacement Nonresident Alien Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Form I–185, Nonresident Alien Canadian Border Crossing Card, must be filed on Form I–175. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application. An application for a replacement Form I–586, Nonresident Alien Border Crossing Card, must be filed on Form I–190. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application to replace a lost, stolen, or mutilated card.

* * * * *

PART 286—IMMIGRATION USER FEE

12. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

13. A new § 286.9 is added to read as follows:

§ 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

(a) *General.* A fee may be charged and collected by the Commissioner for the processing and issuance of specified Service documents at land border Ports-of-Entry. These fees, as specified in § 103.7(b)(1) of this chapter, shall be dedicated to funding the cost of providing application-processing services at land border ports.

(b) *Forms for which a fee may be charged.* (1) A nonimmigrant alien who is required to be issued, or requests to be issued, Form I–94, Arrival/Departure Record, for admission at a land border Port-of-Entry must remit the required fee for issuance of Form I–94 upon determination of admissibility.

(2) A nonimmigrant alien applying for admission at a land border Port-of-Entry as a Visa Waiver Pilot Program applicant pursuant to § 217.2(c) or § 217.3(c) of this chapter must remit the required fee for issuance of Form I–94W upon determination of admissibility.

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B–1/B–2 visa who is required to be issued Form I–444, Mexican Border Visitors Permit, pursuant to § 235.1(g) of this chapter, must remit the required fee for issuance of Form I–444 upon determination of admissibility.

(4) A citizen or lawful permanent resident alien of the United States, Canadian national, or lawful permanent resident of Canada having a common nationality with Canadians, who requests Form I–68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at time of application for Form I–68.

(5) A Canadian national or a lawful permanent resident of Canada having a common nationality with nationals of Canada, who submits Form I–175, Application for Nonresident Alien Canadian Border Crossing Card, must remit the required fee at time of application for Form I–185.

(6) A Mexican national who submits Form I–190, Application for Nonresident Alien Mexican Border Crossing Card, for replacement of a lost, stolen, or mutilated Form I–586, Nonresident Alien Border Crossing Card, must remit the required fee at time of application for a replacement Form I–586.

Dated: May 23, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–19303 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWP–9]

Revocation of Class D Airspace Area at Miramar Naval Air Station (NAS), CA

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area at Miramar NAS, CA. This airspace is presently contained within the San Diego, CA, Class B surface area, and is no longer required.

EFFECTIVE DATE: 0901 UTC, November 9, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Register, System Management Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On June 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by revoking the Class D airspace area at Miramar NAS, CA (60 FR 30481). This airspace is presently located within the San Diego, CA, Class B surface area, and is no longer required.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area at Miramar NAS, CA. This airspace is presently located within the San Diego, CA, Class B surface area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Miramar NAS, CA [Removed]

* * * * *

Issued in Los Angeles, California, on July 18, 1995.

James H. Snow,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–19421 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28286; Amdt. No. 1677]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The application FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on July 28, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the

Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 14, 1995*

Koyuk, AK, Koyuk, NDB RWY 36, Orig
Jacksonville, FL, Craig Muni, VOR/DME or GPS RWY 32, Orig
Jacksonville, FL, Craig Muni, VOR RWY 32, Amdt 2, CANCELLED
Jacksonville, FL, Craig Muni, ILS RWY 32, Amdt 3
Iowa City, IA, Iowa City Muni, GPS RWY 24, Orig
Iowa City, IA, Iowa City Muni, GPS RWY 30, Amdt 1
Benton, KS, Benton, GPS RWY 16, Orig
Hutchinson, KS Hutchinson Muni, GPS RWY 31, Orig
Kingman, KS, Kingman Muni, GPS RWY 18, Orig
Danville, KY, Stuart Powell Field, LOC/DME RWY 30, Amdt 1
Danville, KY, Stuart Powell Field, NDB or GPS–A, Amdt 7
Kearney, NE, Kearney Muni, GPS RWY 36, Orig
McCook, NE, McCook Muni, GPS RWY 12, Orig
Jefferson, NC, Ashe County, GSP RWY 28, Orig
Pottstown, PA, Pottstown-Limerick, VOR/DME–A, Amdt 2
Mitchell, SD, Mitchell Muni, VOR RWY 30, Amdt 4
Mitchell, SD, Mitchell Muni, VOR or GPS RWY 12, Amdt 10
Mitchell, SD, Mitchell Muni, ILS/DME RWY 30, Amdt 2
Dickson, TN, Dickson Muni, VOR/DME or GPS RWY 17, Amdt 4
Dickson, TN, Dickson Muni, NDB RWY 17, Amdt 2
Lawrenchburg, TN, Lawrenceburg Muni, NDB RWY 17, Amdt 4
Lebanon, TN, Lebanon Muni, VOR/DME or GPS–A, Amdt 9
Livingston, TN, Livingston Muni, VOR/DME or GPS RWY 21, Amdt 4
Springfield, TN, Springfield Robertson County, NDB or GPS RWY 22, Amdt 4
Houston, TX, William R. Hobby, VOR/DME RWY 17, Orig

[FR Doc. 95–19420 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28287; Amdt. No. 1678]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designated to provide safe and efficient use of the navigable airspace and to provide safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, there complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPS. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMS for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs

by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on July 28, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME; ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
07/13/95 ...	OK	Ada	Ada Muni	FDC 5/3344	VOR/DME Rwy 17, Amdt 1...
07/14/95 ...	WI	Mosinee	Central Wisconsin	FDC 5/3355	ILS Rwy 8 Amdt 11...
07/17/95 ...	NC	Winston-Salem	Smith Reynolds	FDC 5/3400	ILS Rwy 33, Amdt 27...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3396	LOC/DME Rwy 26, Amdt 4...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3397	VOR/DME or GPS–B, Amdt 3...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3398	VOR or GPS–A, Amdt 7...
07/17/95 ...	NM	Silver City	Silver City/Grant County	FDC 5/3399	NDB or GPS Rwy 26, Amdt 3...
07/17/95 ...	WI	Mosinee	Central Wisconsin	FDC 5/3390	LOC BC Rwy 26, Amdt 10...
07/20/95 ...	OH	Middletown	Hook Field Muni	FDC 5/3455	LOC Rwy 23, Amdt 7A...
07/20/95 ...	OH	Middletown	Hook Field Muni	FDC 5/3457	NDB or GPS Rwy 23, Amdt 8...
07/20/95 ...	OH	Wilmington	Wilmington Airborne Airpark	FDC 5/3452	VOR or GPS Rwy 4, Amdt 5...
07/20/95 ...	WA	Kelso	Kelso-Longview	FDC 5/3469	TKOF MNMS/IFR DEP PROC...
07/20/95 ...	WA	Kelso	Kelso-Longview	FDC 5/3470	NDB or GPS–A, Amdt 5A...
07/21/95 ...	AL	Andalusia-Opp	Andalusia-Opp	FDC 5/3509	NDB or GPS–A, Amdt 2...
07/21/95 ...	AR	Almyra	Almyra Muni	FDC 5/3521	VOR/DME or GPS–A, Amdt 4A...
07/25/95 ...	FL	Panama City	Panama City-Bay County	FDC 5/3588	ILS Rwy 14, Amdt 15...
07/25/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3603	VOR/DME or GPS Rwy 1, Amdt 11A...
07/25/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3607	VOR or GPS Rwy 19, Amdt 8A...
07/26/95 ...	ME	Presque Isle	Presque Isle/Northern Maine Regional Arpt at Presque Isle.	FDC 5/3624	ILS Rwy 1, Amdt 4A...
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3626	LOC/DME Rwy 15, Amdt 6A...
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3629	VOR or GPS–B, Amdt 1A...

FDC date	State	City	Airport	FDC No.	SIAP
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3631	ILS Rwy 15, Amdt 4A.
07/26/95 ...	MT	Butte	Bert Mooney	FDC 5/3632	VOR/DME or GPS–A, Amdt 3A...
07/26/95 ...	OH	Wilmington	Wilmington Airborne Airpark	FDC 5/3641	NDB Rwy 4, Amdt 2...
07/26/95 ...	TN	Waverly	Humphreys County	FDC 5/3642	NDB or GPS Rwy 22, Amdt 3...
07/26/95 ...	TN	Waverly	Humphreys County	FDC 5/3643	VOR/DME or GPS–A, Amdt 2B...

[FR Doc. 95–19418 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220–AB11

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations under the Railroad Unemployment Insurance Act (RUIA) to permit a ''physician assistant-certified'' and an ''accredited Christian Science practitioner'' to execute a statement of sickness in support of payments of sickness benefits under the RUIA. The rule would also eliminate certain obsolete language.

EFFECTIVE DATE: August 7, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701, TDD (FTS (312) 386–4701).

SUPPLEMENTARY INFORMATION: Section 335.2(a)(2) provides that in order to be entitled to sickness benefits under the RUIA, a claimant must provide a ''statement of sickness''. Section 335.3(a) of the Board's regulations lists the individuals from whom the Board will accept a statement of sickness. That list does not currently include physicians assistants. In many parts of the country, physicians assistants are more accessible (and their services less expensive) than licensed medical doctors (MD's). Under previous regulations, the Board will not accept a statement of sickness or supplemental statement of sickness from a physician assistant unless there is some follow-up verification that the physician assistant completed the statement under the supervision of a medical doctor. This is administratively costly and in many cases unnecessarily delays payment of sickness benefits. Thus, the Board adds ''physician assistant-certified'' to the list of individuals from who it will accept a statement of sickness. In addition, under present practice the Board recognizes an accredited Christian Science practitioner as qualified to execute a statement of sickness. Thus, the regulation also adds this category to its list of qualified individuals.

The Board also amends § 335.4(d)(5) of its regulations by deleting the first sentence of paragraph (d)(5), which relates to the filing of a statement of sickness by a female employee whose claim for sickness benefits is based upon pregnancy, miscarriage, or childbirth. The special form required by paragraph (d)(5) is no longer used, since, for purposes of filing for sickness benefits, a distinction is no longer made between pregnancy, miscarriage or childbirth, and other illnesses.

On March 16, 1995, the Board published this rule as a proposed rule (60 FR 14241) inviting comments on or before April 17, 1995. No comments were received. The only change that has been made to the proposed rule is the addition of ''accredited Christian Science practitioner'', discussed above, which merely conforms the regulation to current practice. The Board has determined that this is not a major rule for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Section 335.3(a) is amended by removing ''or'' at the end of paragraph (a)(6), by replacing the period at the end of paragraph (a)(7) with '';'', and by adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* * * *

(8) A physician assistant-certified (PAC); or

(9) An accredited Christian Science Practitioner.

* * * * *

§ 335.4 [Amended]

3. Section 335.4(d)(5) is amended by removing the first sentence.

Dated: July 31, 1995.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–19392 Filed 8–4–95; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0247]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food. This action is in response to a petition filed by Exxon Chemical Co.

DATES: Effective August 7, 1995; written objections and requests for a hearing by September 6, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration,

rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 12, 1993 (58 FR 42976), FDA announced that a petition (FAP 3B4379) had been filed by Exxon Chemical Co., P.O. Box 1607, Baton Rouge, LA 70821–1607. The petition proposed that the food additive regulations be amended in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of ethylene/hexene-1 copolymers containing a maximum of 20 percent by weight of polymer units derived from hexene-1 as components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before September 6, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1520 is amended by redesignating paragraph (a)(3)(i)(*a*) as (a)(3)(i)(*a*)(*1*) and by adding a new paragraph (a)(3)(i)(*a*)(*2*), and in the table in paragraph (c) by revising item 3.2a under the heading ''Olefin polymers'' to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*a*)* * *

(*2*) Olefin basic copolymers manufactured by the catalytic copolymerization of ethylene and hexene-1 shall contain not less than 80 but not more than 90 weight percent of polymer units derived from ethylene.

* * * * *

(c) Specifications:

Olefin polymers	Density	Melting point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* *	*	*	* *	*
3.2a Olefin copolymers described in paragraph (a)(3)(i) of this section for use in articles used for packing or holding food during cooking; except olefin copolymers described in paragraph (a)(3)(i)(*c*)(*2*) of this section and listed in item 3.2b of this table; except that olefin copolymers containing 89 to 95 percent ethylene with the remainder being 4-methyl-pentene-1 contacting food Types III, IVA, V, VIIA, and IX identified in § 176.170(c) of this chapter, Table 1, shall not exceed 0.051 millimeter (mm) (0.002 inch (in)) in thickness when used under conditions of use A and shall not exceed 0.102 mm (0.004 in) in thickness when used under conditions of use B, C, D, E, and H described in § 176.170(c) of this chapter, Table 2. Additionally, olefin copolymers described in (a)(3)(i)(*a*)(*2*) of this section may be used only under conditions of use B, C, D, E, F, G, and H described in § 176.170(c) of this chapter, Table 2, in contact with all food types identified in § 176.170(c) of this chapter, Table 1.	0.85–1.00	.....	2.6 percent at 50 °C ...	Do.
* *	*	*	*	* * *

* * * * *

Dated: July 22, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–19424 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8607]

RIN 1545–AS98

Allowances Received by Members of the Armed Forces in Connection With Moves to New Permanent Duty Stations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exclusion from gross income under section 61 of the Internal Revenue Code of 1986 (Code) of certain allowances received by members of the uniformed services in connection with a change of permanent duty station. The final regulations are required because of amendments to the law made by section 13213(a)(1) of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), 107 Stat. 473 (1993), which redefined the term *moving expenses* under section 217(b) of the Code. Persons affected by the final regulations are members of the uniformed services (the Armed Forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service).

DATES: These regulations are effective August 7, 1995. For dates of applicability, see ''Effective date'' portion under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Marilyn E. Brookens, (202) 622- 1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 61 and 217 of the Internal Revenue Code (Code) that are required because of the amendment of section 217(b) by OBRA 1993. In Notice 94–59, 1994- 1 C.B. 371, the IRS announced its intention to issue guidance to clarify that certain allowances received by members of the Armed Forces continue to be excludable from gross income notwithstanding the amendment of section 217(b).

On December 21, 1994, temporary regulations (TD 8575) relating to military expense allowances under sections 61 and 217 (relating to definitions of gross income and of moving expenses) were published in the **Federal Register** (59 FR 65711). A notice of proposed rulemaking (IA–50–94) relating to the same subjects was published in the **Federal Register** for the same day (59 FR 65739). No public hearing was requested or held.

Written comments regarding the regulations were received. After consideration of all the comments, the regulations proposed by IA–50–94 are adopted as revised by this Treasury decision, and the corresponding temporary regulations are withdrawn. The comments are discussed below.

Explanation of Provisions

I. General Background

Section 217(g) of the Code provides that a member of the Armed Forces on active duty who moves pursuant to a military order and incident to a permanent change of station does not include in income reimbursements or allowances for moving or storage expenses, or the value of moving and storage services furnished in kind. For purposes of section 217(g), moving expenses are defined in section 217(b). OBRA 1993 amended section 217(b) by narrowing the definition of deductible moving expenses.

As a result of this amendment, questions arose concerning the federal tax treatment of certain allowances provided by the Department of Defense and by the Department of Transportation under title 37 of the United States Code to members of the Armed Forces in connection with a transfer to a new permanent duty station. Those allowances include: (1) a dislocation allowance, intended to partially reimburse expenses (e.g., lease forfeitures, temporary living charges in hotels, and breakage of household goods in transit) incurred in relocating a household; (2) a temporary lodging expense, intended to partially offset the added living expenses of temporary lodging (up to 10 days) within the United States (other than Hawaii or Alaska); (3) a temporary lodging allowance, intended to help defray higher than normal living costs (for up to 60 days) outside the United States or in Hawaii or Alaska; and (4) a move-in housing allowance, intended to defray costs (e.g., rental agent fees, home-security improvements, and supplemental heating equipment) associated with occupying leased quarters outside the United States.

Section 1.61–2(b) of the Income Tax Regulations provides, in part, that subsistence and uniform allowances granted to members of the Armed Forces, Coast and Geodetic Survey (now known as the National Oceanic and Atmospheric Administration), and Public Health Service, and amounts received by them as commutation of quarters, are to be excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income. These exclusions from gross income of quarters and subsistence allowances paid to members of the uniformed services are ones of long standing, dating back to 1925. See *Jones* v. *United States,* 60 Ct. Cl. 552 (1925).

The Treasury Department and the IRS have determined that the four above-referenced allowances, to the extent not excluded under other provisions of the Code (such as section 217(g) or section 132(g)), are to be treated as quarters or subsistence allowances. Section 1.61–2(b) is revised to provide that these allowances are excluded from the gross income of members of the uniformed services. Section 1.61–2(b)(2) and section 1.217–2(g)(6) clarify that no deduction is allowed for any expenses incurred in connection with a transfer to a new permanent duty station to the extent the expenses are reimbursed by an excluded allowance. However, any expense that meets the definition of a *moving expense* as defined in section 217(b) and is not reimbursed continues to be deductible under current law.

II. Public Comments

The National Oceanic and Atmospheric Administration (NOAA) requested that the regulations provide active duty officers of the NOAA Corps with an exclusion for the allowances covered by these regulations. The commissioned corps of NOAA, the commissioned corps of the Public Health Service (PHS), and the Armed Forces collectively comprise the uniformed services. 10 U.S.C. 101(a)(5) (Supp. IV 1992). The Armed Forces consist of the Army, Navy, Air Force, Marine Corps, and Coast Guard. 10 U.S.C. 101(a)(4) (1988).

The pay and allowance provisions of title 37 apply to all members of the uniformed services. In particular, the allowances that are the subject of these regulations are the same for the NOAA commissioned corps and the PHS commissioned corps as for the Armed Forces. The Department of Treasury historically has extended the holdings of *Jones* v. *United States* to all members of the uniformed services. I.T. 2232, IV–2 C.B. 144 (1925); Mim. 3413, V–1 C.B. 29 (1926). Accordingly, the final regulations under section 1.61–2(b) provide that the four earlier-referenced allowances are quarters or subsistence allowances and are excluded from gross income for members of the uniformed services.

III. Effective Date

The final regulations are effective with respect to allowances for expenses incurred after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marilyn E. Brookens of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.61–2 is amended by:

1. Removing the language ''Coast and Geodetic Survey'' from the second sentence of paragraph (a)(1) and adding in its place the language ''National Oceanic and Atmospheric Administration''.

2. Revising paragraph (b) to read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(b) *Members of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service.* (1) Subsistence and uniform allowances granted commissioned officers, chief warrant officers, warrant officers, and enlisted personnel of the Armed Forces, National Oceanic and Atmospheric Administration, and Public Health Service of the United States, and amounts received by them as commutation of quarters, are excluded from gross income. Similarly, the value of quarters or subsistence furnished to such persons is excluded from gross income.

(2) For purposes of this section, quarters or subsistence includes the following allowances for expenses

incurred after December 31, 1993, by members of the Armed Forces, members of the commissioned corps of the National Oceanic and Atmospheric Administration, and members of the commissioned corps of the Public Health Service, to the extent that the allowances are not otherwise excluded from gross income under another provision of the Internal Revenue Code: a dislocation allowance, authorized by 37 U.S.C. 407; a temporary lodging allowance, authorized by 37 U.S.C. 405; a temporary lodging expense, authorized by 37 U.S.C. 404a; and a move-in housing allowance, authorized by 37 U.S.C. 405. No deduction is allowed under this chapter for any expenses reimbursed by such excluded allowances. For the exclusion from gross income of—

(i) Disability pensions, see section 104(a)(4) and the regulations thereunder;

(ii) Miscellaneous items, see section 122.

(3) The per diem or actual expense allowance, the monetary allowance in lieu of transportation, and the mileage allowance received by members of the Armed Forces, National Oceanic and Atmospheric Administration, and the Public Health Service, while in a travel status or on temporary duty away from their permanent stations, are included in their gross income except to the extent excluded under the accountable plan provisions of § 1.62–2.

* * * * *

§ 1.61–22T [Removed]

Par. 3. Section 1.61–22T is removed.

Par. 4. Section 1.217–2 is amended by adding paragraph (g)(6) to read as follows:

§ 1.217–2 Deduction for moving expenses paid or incurred in taxable years beginning after December 31, 1969.

* * * * *

(g) * * *

(6) *Disallowance of deduction.* No deduction is allowed under this section for any moving or storage expense reimbursed by an allowance that is excluded from gross income.

§ 1.217–2T [Removed]

Par. 5. Section 1.217–2T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 27, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19282 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8608]

RIN 1545–AS93

Adjustments Required by Changes in Method of Accounting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for changes in method of accounting. These regulations clarify the Commissioner's authority to prescribe terms and conditions for effecting a change in method of accounting. The regulations affect taxpayers changing a method of accounting for federal income tax purposes.

DATES: These regulations are effective August 4, 1995. For dates of applicability see §§ 1.446–1(e)(3)(iii) and 1.481–5.

FOR FURTHER INFORMATION CONTACT: Cheryl Oseekey, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the IRS published a notice of proposed rulemaking in the **Federal Register** (59 FR 66825), relating to the requirements for changes in method of accounting. That document proposed clarifying amendments to the regulations under sections 446 and 481. No public hearing was requested or held.

Two comments responding to this notice were received. After consideration of the comments, the amendments proposed by IA–42–93 are adopted with minor editorial revisions by this Treasury decision.

Summary of Comments

The notice of proposed rulemaking proposes to conform the existing regulations under sections 446(e) and 481(c) to long-standing IRS administrative practices regarding the use of adjustment periods under section 481(a) and the use of a cut-off method. Under the general rule of the proposed regulations, any section 481(a) adjustment attributable to a voluntary or an involuntary change in method of accounting is taken into account in the taxable year of change, whether the adjustment increases or decreases taxable income. However, the regulations also propose to amend §§ 1.446–1(e)(3) and 1.481–5 to clarify the Commissioner's authority to prescribe the terms and conditions for effecting a change in method of accounting. Under the regulations, the terms and conditions that may be prescribed by the Commissioner include the taxable year or years in which a section 481(a) adjustment is taken into account and the use of a cut-off method to effect a change in method of accounting.

Two comments were received in response to the notice. The comments questioned IRS authority to require the use of a cut-off method, and whether to require it is sound administrative practice. After considering the comments, the IRS and the Treasury Department continue to believe that the IRS has the authority under section 446(e) to impose a cut-off method, and that it is consistent with section 481(a). Furthermore, the IRS and the Treasury Department believe that requiring a change in method of accounting on a cut-off basis in appropriate circumstances is administratively sound. For example, the application of a cut-off method to effect a change within the last-in, first-out (LIFO) inventory method is justified on the basis of simplicity because it eliminates the need to revalue LIFO increments.

The amendments proposed by IA–42–93 are adopted by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Rosemary DeLeone, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for section 1.446–1 and by adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.446–1 also issued under 26 U.S.C. 446 and 461(h). * * *

Section 1.481–1 also issued under 26 U.S.C. 481.

Section 1.481–2 also issued under 26 U.S.C. 481.

Section 1.481–3 also issued under 26 U.S.C. 481.

Section 1.481–4 also issued under 26 U.S.C. 481.

Section 1.481–5 also issued under 26 U.S.C. 481. * * *

Par. 2. Section 1.446–1 is amended by revising paragraph (e)(3) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(3)(i) Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting the taxpayer must file an application on Form 3115 with the Commissioner within 180 days after the beginning of the taxable year in which the taxpayer desires to make the change in method of accounting. To the extent applicable, the taxpayer must furnish all information requested on the Form 3115. This information includes all classes of items that will be treated differently under the new method of accounting, any amounts that will be duplicated or omitted as a result of the proposed change, and the taxpayer's computation of any adjustments necessary to prevent such duplications or omissions. The Commissioner may require such other information as may be necessary to determine whether the proposed change will be permitted. Permission to change a taxpayer's method of accounting will not be granted unless the taxpayer agrees to the Commissioner's prescribed terms and conditions for effecting the change, including the taxable year or years in which any adjustment necessary to prevent amounts from being duplicated or omitted is to be taken into account. See section 481 and the regulations thereunder, relating to certain adjustments resulting from accounting method changes, and section 472 and the regulations thereunder, relating to adjustments for changes to and from the last-in, first-out inventory method.

(ii) Notwithstanding the provisions of paragraph (e)(3)(i) of this section, the Commissioner may prescribe administrative procedures under which taxpayers will be permitted to change their method of accounting. The administrative procedures shall prescribe those terms and conditions necessary to obtain the Commissioner's consent to effect the change and to prevent amounts from being duplicated or omitted. The terms and conditions that may be prescribed by the Commissioner may include terms and conditions that require the change in method of accounting to be effected on a cut-off basis or by an adjustment under section 481(a) to be taken into account in the taxable year or years prescribed by the Commissioner.

(iii) This paragraph (e)(3) is effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see § 1.446–1(e)(3) (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

Par. 3. Section 1.481–1 is amended as follows:

1. Paragraph (a)(2) is amended by adding the phrase ''(hereinafter referred to as pre-1954 years)'' to the end of the paragraph.

2. The third sentence of paragraph (c)(1) is amended by removing ''pre-1954 Code years'' and replacing it with ''pre-1954 years''.

3. Paragraphs (c) (2), (3), and (4) are revised.

4. Paragraphs (c) (6) and (7) are removed.

5. Paragraph (d) is revised.

6. Paragraph (e) is removed.

The revised paragraphs read as follows:

§ 1.481–1 Adjustments in general.

* * * * *

(c) * * *

(2) If a change in method of accounting is voluntary (i.e., initiated by the taxpayer), the entire amount of the adjustments required by section 481(a) is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. See, however, §§ 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account.

(3) If the change in method of accounting is involuntary (i.e., not initiated by the taxpayer), then only the amount of the adjustments required by section 481(a) that is attributable to taxable years beginning after December 31, 1953, and ending after August 16, 1954, (hereinafter referred to as post-1953 years) is taken into account. This amount is generally taken into account in computing taxable income in the taxable year of the change, regardless of whether the adjustments increase or decrease taxable income. See, however, §§ 1.446–1(e)(3) and 1.481–4 which provide that the Commissioner may prescribe the taxable year or years in which the adjustments are taken into account. See also § 1.481–3 for rules relating to adjustments attributable to pre-1954 years.

(4) For any adjustments attributable to post-1953 years that are taken into account entirely in the year of change and that increase taxable income by more than $3,000, the limitations on tax provided in section 481(b) (1) or (2) apply. See § 1.481–2 for rules relating to the limitations on tax provided by sections 481(b) (1) and (2).

* * * * *

(d) Any adjustments required under section 481(a) that are taken into account during a taxable year must be properly taken into account for purposes of computing gross income, adjusted gross income, or taxable income in determining the amount of any item of gain, loss, deduction, or credit that depends on gross income, adjusted gross income, or taxable income.

Par. 4. Section 1.481–2 is amended as follows:

1. The first and second sentences of paragraph (a) are revised.

2. The first sentence of paragraph (b) introductory text is revised.

3. The first sentence of paragraph (c)(1) is revised.

4. The first sentence of paragraph (c)(2) is amended by removing ''subparagraph (1) of this paragraph'' and replacing it with ''paragraph (c)(1) of this section''.

5. Paragraph (c)(3) introductory text is amended by removing ''subparagraph (1) of this paragraph'' and replacing it with ''paragraph (c)(1) of this section''.

6. Paragraph (c)(4) is revised.

7. Paragraph (c)(6) is amended by removing ''Internal Revenue Code of 1954'' and replacing it with ''Internal Revenue Code of 1986''.

8. The second sentence of paragraph (d) is amended by removing ''Internal Revenue Code of 1954'' and replacing it with ''Internal Revenue Code of 1986''.

9. *Example (1)* of paragraph (d) is amended by removing ''pre-1954 Code

years'' and replacing it with ''pre-1954 years'' in each place that it appears.

The revised paragraphs read as follows:

§ 1.481–2 Limitation on tax.

(a) *Three-year allocation.* Section 481(b)(1) provides a limitation on the tax under chapter 1 of the Internal Revenue Code for the taxable year of change that is attributable to the adjustments required under section 481(a) and § 1.481–1 if the entire amount of the adjustments is taken into account in the year of change. If such adjustments increase the taxpayer's taxable income for the taxable year of the change by more than $3,000, then the tax for such taxable year that is attributable to the adjustments shall not exceed the lesser of the tax attributable to taking such adjustments into account in computing taxable income for the taxable year of the change under section 481(a) and § 1.481–1, or the aggregate of the increases in tax that would result if the adjustments were included ratably in the taxable year of the change and the two preceding taxable years. * * *

(b) *Allocation under new method of accounting.* Section 481(b)(2) provides a second alternative limitation on the tax for the taxable year of change under chapter 1 of the Internal Revenue Code that is attributable to the adjustments required under section 481(a) and § 1.481–1 where such adjustments increase taxable income for the taxable year of change by more than $3,000. * * *

(c) *Rules for computation of tax.* (1) The first step in determining whether either of the limitations described in section 481(b) (1) or (2) applies is to compute the increase in tax for the taxable year of the change that is attributable to the increase in taxable income for such year resulting solely from the adjustments required under section 481(a) and § 1.481–1.

* * * * *

(4) The tax for the taxable year of the change shall be the tax for such year, computed without taking any of the adjustments referred to in paragraph (c)(1) of this section into account, increased by the smallest of the following amounts—

(i) The amount of tax for the taxable year of the change attributable solely to taking into account the entire amount of the adjustments required by section 481(a) and § 1.481–1;

(ii) The sum of the increases in tax liability for the taxable year of the change and the two immediately preceding taxable years that would have resulted solely from taking into account one-third of the amount of such adjustments required for each of such years as though such amounts had been properly attributable to such years (computed in accordance with paragraph (c)(2) of this section); or

(iii) The net increase in tax attributable to allocating such adjustments under the new method of accounting (computed in accordance with paragraph (c)(3) of this section).

* * * * *

§ 1.481–3 [Amended]

Par. 5. Section 1.481–3 is amended as follows:

1. The language ''pre-1954 Code years'' is removed and the language ''pre-1954 years'' is added in its place in the section heading and the first, second and third sentences of the section.

2. Remove the last sentence of the section.

§ 1.481–4 [Removed]

Par. 6. Section 1.481–4 is removed.

§ 1.481–5 [Redesignated as § 1.481–4]

Par. 7. Section 1.481–5 is redesignated as § 1.481–4 and is revised to read as follows:

§ 1.481–4 Adjustments taken into account with consent.

(a) In addition to the terms and conditions prescribed by the Commissioner under § 1.446–1(e)(3) for effecting a change in method of accounting, including the taxable year or years in which the amount of the adjustments required by section 481(a) is to be taken into account, or the methods of allocation described in section 481(b), a taxpayer may request approval of an alternative method of allocating the amount of the adjustments under section 481. See section 481(c). Requests for approval of an alternative method of allocation shall set forth in detail the facts and circumstances upon which the taxpayer bases its request. Permission will be granted only if the taxpayer and the Commissioner agree to the terms and conditions under which the allocation is to be effected. See § 1.446–1(e) for the rules regarding how to secure the Commissioner's consent to a change in method of accounting.

(b) An agreement to the terms and conditions of a change in method of accounting under § 1.446–1(e)(3), including the taxable year or years prescribed by the Commissioner under that section (or an alternative method described in paragraph (a) of this section) for taking the amount of the adjustments under section 481(a) into account, shall be in writing and shall be signed by the Commissioner and the taxpayer. It shall set forth the items to be adjusted, the amount of the adjustments, the taxable year or years for which the adjustments are to be taken into account, and the amount of the adjustments allocable to each year. The agreement shall be binding on the parties except upon a showing of fraud, malfeasance, or misrepresentation of material fact.

Par. 8. Section 1.481–5 is added to read as follows:

§ 1.481–5 Effective dates.

Sections 1.481–1, 1.481–2, 1.481–3, and 1.481–4 are effective for Consent Agreements signed on or after December 27, 1994. For Consent Agreements signed before December 27, 1994, see §§ 1.481–1, 1.481–2, 1.481–3, 1.481–4, and 1.481–5 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995).

§ 1.481–6 [Removed]

Par. 9. Section 1.481–6 is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 26, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19283 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 40, 48, and 602

[TD 8609]

RIN 1545–AS10

Gasohol; Compressed Natural Gas

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to gasohol blending and the tax on compressed natural gas (CNG). The regulations reflect and implement certain changes made by the Energy Policy Act of 1992 (the Energy Act) and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The regulations relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The regulations relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat.

EFFECTIVE DATE: These regulations are effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1270. The estimated average annual reporting burden per respondent is .2 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 19, 1994, the IRS published in the **Federal Register** (59 FR 52735) proposed regulations (PS–66–93) that generally consolidate the rules relating to the gasoline tax and the diesel fuel tax into a single set of rules applicable to both fuels. These regulations also proposed rules relating to gasohol and CNG.

Written comments regarding these regulations were received and a public hearing was held on January 11, 1995. After consideration of the comments relating to gasohol and CNG, the proposed regulations on these topics are adopted as revised by this Treasury decision. Final regulations relating to the consolidation provisions contained in the proposed regulations will be issued later.

Explanation of Provisions

CNG; Treatment of Liquefied Natural Gas (LNG)

Section 4041(a)(2) imposes a special motor fuels tax on any liquid (other than kerosene, gas oil, fuel oil, gasoline, or diesel fuel) that is sold for use or used as a fuel in a motor vehicle or motorboat. The rate of this tax is 18.4 cents per gallon (18.3 cents per gallon in the case of liquefied petroleum gas).

Effective October 1, 1993, section 4041(a)(3) (as added by the 1993 Act) imposes a tax of 48.54 cents per MCF (thousand cubic feet) on CNG that is sold for use or used in a motor vehicle or motorboat.

CNG is a gas at the time it is delivered into the fuel supply tank of a motor vehicle or motorboat and when it is actually combusted in the engine. LNG, which is produced by compressing pipeline natural gas and cooling it to −260 degrees Fahrenheit, is a liquid when it is delivered into the fuel supply tank of a motor vehicle or motorboat, but is vaporized into a gas when it is actually combusted in the engine.

Several commentators suggested that the CNG rate, rather than the rate on special motor fuels, should apply to LNG because (1) Both products have the same chemical composition, (2) both products are gases when they are actually combusted in an engine, and (3) LNG would be at a competitive disadvantage if taxed at the liquid rate.

The final regulations do not adopt this suggestion. Before the 1993 Act, the section 4041 special fuels tax applied to liquids sold for use or used as a fuel in motor vehicles or motorboats. Thus, LNG was subject to tax at the special fuels rate of 18.4 cents per gallon when the 1993 Act imposed a tax at a lower rate on CNG. The 1993 Act contained no provision that would change the treatment of LNG, nor is there any suggestion in the legislative history that Congress intended to do so.

CNG; Gasoline Gallon Equivalent

The CNG industry has recently begun to sell CNG on the basis of CNG's Gasoline Gallon Equivalent (GGE). Generally, a GGE represents a particular fuel's energy content relative to the energy content of gasoline; thus, vehicles can travel approximately the same distance with a GGE of CNG as with a gallon of gasoline.

Several commentators suggested that the final regulations should express the CNG tax rate in terms of GGE instead of in terms of MCF as provided in the Code. The final regulations do not adopt this suggestion. However, there is no restriction on taxpayers engaging in sales on the basis of GGE provided that the tax is actually paid at the rate of 48.54 cents per MCF.

Gasohol; Tolerance Rule

The gasoline tax rate on most removals and entries is 18.4 cents per gallon (the regular tax rate). However, a reduction from the regular tax rate is allowed for gasohol (a gasoline/alcohol mixture containing a specified amount of alcohol) and gasoline removed or entered for the production of gasohol.

Prior to its amendment by the Energy Act, section 4081(c) treated a mixture of gasoline and alcohol as gasohol only if at least 10 percent of the mixture was alcohol. Regulations allow a tolerance for mixtures that contain less than 10 percent alcohol but at least 9.8 percent alcohol. Under the tolerance rule, a portion of the mixture equal to the number of gallons of alcohol in the mixture multiplied by 10 is considered to be gasohol. Any excess liquid in the mixture is taxed at the regular rate.

This tolerance rule accommodates operational problems associated with the blending of gasohol. For example, blenders may fail to attain the required 10-percent alcohol level because the device used to meter the amount of gasoline or alcohol delivered into a tank truck is imprecise or because the high-speed gasoline or alcohol pump used does not shut off at the proper moment. As noted in the preamble to an earlier regulation relating to gasohol tolerances (published in the **Federal Register** on August 21, 1987 (52 FR 31614)), this 2 percent tolerance is based upon a standard industry tolerance specification for wholesale measuring devices.

Effective January 1, 1993, section 4081(c) was amended to allow a reduction from the regular rate for mixtures containing at least 5.7 percent alcohol but less than 7.7 percent alcohol (5.7 percent gasohol) and mixtures containing at least 7.7 percent alcohol but less than 10 percent alcohol (7.7 percent gasohol).

The proposed regulations did not extend the tolerance rule to mixtures that contain less than 7.7 or 5.7 percent alcohol. Several commentators suggested that the tolerance rule be so extended. They noted that the same operational problems that occur with the blending of 10 percent gasohol also occur with the blending of 7.7 or 5.7 percent gasohol.

The final regulations adopt this suggestion and allow a tolerance for 7.7 and 5.7 percent gasohol in approximately the same percentage as that allowed for 10 percent gasohol. Any excess liquid in a mixture that qualifies as 5.7 percent gasohol or 7.7 percent gasohol because of the tolerance rule is taxed at the regular rate.

Gasohol; Alcohol-Based Ethers

The proposed regulations provide that alcohol (that is, alcohol that is not produced from petroleum, natural gas, or coal (including peat)) used to produce ethers such as ethyl tertiary butyl ether (ETBE) or methyl tertiary butyl ether (MTBE) is treated as alcohol for purposes of the reduced tax rates for gasohol. Some commentators suggested that, with respect to gasohol produced by blending gasoline made with alcohol-based ether at a refinery, the regulations should also provide (1) An allocation rule and (2) guidance regarding the application of the income tax credit allowable by section 40.

Allocation rule. Traditionally, gasohol has been produced by delivering the requisite amount of alcohol into a

transport trailer that contains gasoline while the trailer is at a terminal rack. The two components are blended together by the motion of the trailer as it moves on the highway.

Now, however, gasohol may be produced at the refinery with alcohol-based ether. This type of gasohol does not absorb water, which means it can be transported through a pipeline. However, after shipment from the refinery and before its removal at the terminal rack, much of this gasohol may have been diluted with non-qualifying blends because of the use of common-carrier pipelines, barges, and non-segregated storage facilities. As a result, the blend removed at the terminal rack may not qualify for the reduction from the regular rate due to commingling between the refinery and terminal rack. To address this issue, several commentators suggested an allocation system for gasohol that is produced before it reaches the terminal that would not depend on the actual existence of a qualified mixture at the taxing point. For example, a refiner that removes one million gallons of gasohol from its refinery for bulk shipment to a terminal could designate any one million gallons of gasoline that is removed at the terminal rack as gasohol, regardless of the actual alcohol-based ether content of the gasoline.

Other commentators, by contrast, opposed expanding the benefit for gasohol made with ether-based alcohol by allowing such an allocation rule. Rather, these commentators argued that a batch of mixture should not be taxed at the reduced rate unless the mixture actually contains the requisite amount of alcohol at the taxing point.

The final regulations do not adopt the suggested allocation rule. Under section 4081(c), a reduction from the regular tax rate is allowable in the case of a taxable removal or entry of gasohol. Thus, a taxable removal or entry of gasoline that does not contain the requisite amount of alcohol at the time of the taxable removal or entry is not a removal of gasohol and is subject to tax at the regular rate.

However, the final regulations do address concerns arising from this relatively recent development of producing gasohol at the refinery rather than at the terminal rack. Specifically, section 4101 provides that every person required to be registered with respect to the gasoline tax must register at such time, in such form and manner, and subject to such terms and conditions as the Secretary may prescribe by regulations. Pursuant to that provision, the final regulations provide that a refiner registered by the IRS that produces a batch of gasohol may treat itself as not registered with respect to a bulk removal of that gasohol. If the refiner treats itself in this manner, the removal would not be exempt from the tax under section 4081(a)(1)(B), which provides that the bulk removal by a registered refiner for delivery to a terminal operated by a registered terminal operator is not subject to the tax. However, because the mixture would qualify as gasohol at the time of removal from the refinery, it would be subject to tax at the reduced rate. The final regulations also provide that the refiner is not required to deposit this tax before filing the return relating to that tax.

If a refiner chooses this option, tax also will be imposed under § 48.4081–2(b) at the full rate when the fuel is removed at the terminal rack, but a refund of this second tax may then be allowable to the position holder under section 4081(e).

Application of section 40. Section 40 allows an income tax credit to the producer of certain mixtures of alcohol and gasoline. Under section 40(c), the amount of this credit with respect to any alcohol is reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of section 4081(c).

One commentator suggested that the final regulations provide that a refiner that produces a mixture of gasoline with an alcohol-based ether always is eligible for the section 40 credit, without reduction under section 40(c).

The final regulations do not adopt this suggestion because it is inconsistent with section 40(c), which requires a reduction in the credit whenever a mixture is taxed at a reduced rate for gasohol under section 4081(c).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6302(c)–0 [Removed]

Par. 2. Section 40.6302(c)–0 is removed.

Par. 3. In § 40.6302(c)–1, paragraph (e)(4) is added to read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

* * * * *

(e) * * *

(4) *Taxes excluded; certain removals of gasohol from refineries.* No deposit is required in the case of the tax imposed under § 48.4081–3(b)(1)(iii) of this chapter.

* * * * *

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 4. The authority citation for part 48 is amended by removing the entries for Sections 48.4041.21 and 48.4081–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. In § 48.4041–8, paragraph (f) is amended by:

1. Revising the introductory text of paragraph (f)(1).
2. Revising paragraph (f)(1)(i).
3. Redesignating paragraph (f)(1)(ii) as paragraph (f)(1)(iii) and adding a new paragraph (f)(1)(ii).
4. Removing from paragraph (f)(2) the language ''diesel fuel or''.

The revisions and additions read as follows:

§ 48.4041–8 Definitions.

* * * * *

(f) *Special motor fuel.* (1) Except as provided in paragraph (f)(2) of this section, *special motor fuel* means any liquid fuel, including—

(i) Any liquefied petroleum gas (such as propane, butane, pentane, or mixtures of the same);

(ii) Liquefied natural gas; or

* * * * *

Par. 6. Section 48.4041–21 is revised to read as follows:

§ 48.4041–21 Compressed natural gas (CNG).

(a) *Delivery of CNG into the fuel supply tank of a motor vehicle or motorboat*—(1) *Imposition of tax.* Tax is imposed on the delivery of compressed natural gas (CNG) into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat unless tax was previously imposed on the CNG under paragraph (b) of this section.

(2) *Liability for tax.* If the delivery of the CNG is in connection with a sale, the seller of the CNG is liable for the tax imposed under paragraph (a)(1) of this section. If the delivery of the CNG is not in connection with a sale, the operator of the motor vehicle or motorboat, as the case may be, is liable for the tax imposed under paragraph (a)(1) of this section.

(b) *Bulk sales of CNG*—(1) *In general.* Tax is imposed on the sale of CNG that is not in connection with the delivery of the CNG into the fuel supply tank of the propulsion engine of a motor vehicle or motorboat if, by the time of the sale—

(i) The buyer has given the seller a written statement stating that the entire quantity of the CNG covered by the statement is for use as a fuel in a motor vehicle or motorboat; and

(ii) The seller has given the buyer a written acknowledgement of receipt of the statement described in paragraph (b)(1)(i) of this section.

(2) *Liability for tax.* The seller of the CNG is liable for the tax imposed under this paragraph (b).

(c) *Exemptions*—(1) *In general.* The taxes imposed under this section do not apply to a delivery or sale of CNG for a use described in § 48.4082–4T(c)(1) through (5)(A) or (c)(6) through (11). However, if the person otherwise liable for tax under this section is the seller of the CNG, the exemption under this section applies only if, by the time of sale, the seller receives an unexpired certificate (as described in this paragraph (c)) from the buyer and has no reason to believe any information in the certificate is false.

(2) *Certificate; in general.* The certificate to be provided by a buyer of CNG is to consist of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, should be in substantially the same form as the model certificate provided in paragraph (c)(4) of this section, and should contain all information necessary to complete the model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date a new certificate is provided to the seller.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's right to provide a certificate has been withdrawn.

(3) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of CNG to provide a certificate under this paragraph (c) if the buyer uses CNG to which a certificate applies in a taxable use. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(4) *Model certificate.*

Certificate of Person Buying Compressed Natural Gas (CNG) for a Nontaxable Use

(To support tax-free sales of CNG under section 4041 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of seller

_____ ''Buyer'') certifies the following under penalties of perjury:

The CNG to which this certificate relates will be used in a nontaxable use.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Invoice or delivery ticket number _____

2. _____ (number of MCFs) _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____

2. Expiration date _____ (period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427 of the Internal Revenue Code for any CNG to which this certificate relates.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

Buyer understands that if Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn. In addition, the Internal Revenue Service has not notified Buyer that the right to provide a certificate has been withdrawn from a purchaser to which Buyer sells CNG tax free.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(d) *Rate of tax.* The rate of the tax imposed under this section is the rate prescribed by section 4041(a)(3).

(e) *Effective date.* This section is effective October 1, 1995.

§ 48.4081–0 [Removed]

Par. 7. Section 48.4081–0 is removed.

Par. 8. In § 48.4081–3, paragraph (b)(1) is revised to read as follows:

§ 48.4081–3 Gasoline tax; taxable events other than removal at the terminal rack.

* * * * *

(b) * * * (1) *In general.* Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and paragraph (b)(2) of this section (relating to an exception for certain refineries), tax is imposed on the following removals of gasoline from a refinery:

(i) The removal is by bulk transfer and the refiner or the owner of the gasoline immediately before the removal is not a gasoline registrant.

(ii) The removal is at the rack.

(iii) After September 30, 1995, the removal is of a batch of gasohol from an approved refinery by bulk transfer and the refiner treats itself with respect to the removal as a person that is not registered under section 4101. See § 48.4101–3. For the rule providing that no deposit is required in the case of the tax imposed under this paragraph (b)(1)(iii), see § 40.6302(c)-1(e)(4) of this chapter. For the rule allowing inspections of facilities where gasohol is produced, see section 4083.

Par. 9. Section 48.4081–6 is revised to read as follows:

§ 48.4081–6 Gasoline tax; gasohol.

(a) *Overview.* This section provides rules for determining the applicability

of reduced rates of tax on a removal or entry of gasohol or of gasoline used to produce gasohol. Rules are also provided for the imposition of tax on the separation of gasoline from gasohol and the failure to use gasoline that has been taxed at a reduced rate to produce gasohol.

(b) *Explanation of terms*—(1) *Alcohol*—(i) *In general; source of the alcohol.* Except as provided in paragraph (b)(1)(ii) of this section, alcohol means any alcohol that is not a derivative product of petroleum, natural gas, or coal (including peat). Thus, the term includes methanol and ethanol that are not derived from petroleum, natural gas, or coal (including peat). The term also includes alcohol produced either within or outside the United States.

(ii) *Proof and denaturants.* Alcohol does not include alcohol with a proof of less than 190 degrees (determined without regard to added denaturants). If the alcohol added to a fuel/alcohol mixture (the added alcohol) includes impurities or denaturants, the volume of alcohol in the mixture is determined under the following rules:

(A) The volume of alcohol in the mixture includes the volume of any impurities (other than added denaturants and any fuel with which the alcohol is mixed) that reduce the purity of the added alcohol to not less than 190 proof (determined without regard to added denaturants).

(B) The volume of alcohol in the mixture includes the volume of any approved denaturants that reduce the purity of the added alcohol, but only to the extent that the volume of the approved denaturants does not exceed five percent of the volume of the added alcohol (including the approved denaturants). If the volume of the approved denaturants exceeds five percent of the volume of the added alcohol, the excess over five percent is considered part of the nonalcohol content of the mixture.

(C) For purposes of this paragraph (b)(1)(ii), approved denaturants are any denaturants (including gasoline and nonalcohol fuel denaturants) that reduce the purity of the added alcohol and are added to such alcohol under a formula approved by the Secretary.

(iii) *Products derived from alcohol.* If alcohol described in paragraphs (b)(1)(i) and (ii) of this section has been chemically transformed in producing another product (that is, the alcohol is no longer present as a separate chemical in the other product) and there is no significant loss in the energy content of the alcohol, any mixture containing the product includes the volume of alcohol used to produce the product. Thus, for example, a mixture of gasoline and ethyl tertiary butyl ether (ETBE), or of gasoline and methyl tertiary butyl ether (MTBE), includes any alcohol described in paragraphs (b)(1)(i) and (ii) of this section that is used to produce the ETBE or MTBE, respectively, in a chemical reaction in which there is no significant loss in the energy content of the alcohol.

(2) *Gasohol*—(i) *In general*—(A) Gasohol is a mixture of gasoline and alcohol that is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol. The determination of whether a particular mixture is 10 percent gasohol, 7.7 percent gasohol, or 5.7 percent gasohol is made on a batch-by-batch basis. A batch of gasohol is a discrete mixture of gasoline and alcohol.

(B) If a particular mixture is produced within the bulk transfer/terminal system (for example, at a refinery), the determination of whether the mixture is gasohol is made at the time of the taxable removal or entry of the mixture.

(C) If a particular mixture is produced outside of the bulk transfer/terminal system (for example, by splash blending after the gasoline has been removed from the terminal at the rack), the determination of whether the mixture is gasohol is made immediately after the mixture is produced. In such a case, the contents of the batch typically correspond to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. The volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, if metered gallons of gasoline and alcohol are added to a tank already containing more than a minor amount of liquid, the determination of whether a batch satisfies the alcohol-content requirement will be made by taking into account the amount of alcohol and non-alcohol fuel contained in the liquid already in the tank. Ordinarily, any amount in excess of 0.5 percent of the capacity of the tank will not be considered minor.

(ii) *10 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 10 percent gasohol if it contains at least 9.8 percent alcohol by volume, without rounding.

(B) *Batches containing less than 10 percent but at least 9.8 percent alcohol.* If a batch of mixture contains less than 10 percent alcohol but at least 9.8 percent alcohol, without rounding, only a portion of the batch is considered to be 10 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 10. Any remaining liquid in the mixture is excess liquid.

(iii) *7.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 7.7 percent gasohol if it contains less than 9.8 percent alcohol but at least 7.55 percent alcohol by volume, without rounding.

(B) *Batches containing less than 7.7 percent but at least 7.55 percent alcohol.* If a batch of mixture contains less than 7.7 percent alcohol but at least 7.55 percent alcohol, without rounding, only a portion of the batch is considered to be 7.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 12.987. Any remaining liquid in the mixture is excess liquid.

(iv) *5.7 percent gasohol*—(A) *In general.* A batch of gasoline/alcohol mixture is 5.7 percent gasohol if it contains less than 7.55 percent alcohol but at least 5.59 percent alcohol by volume, without rounding.

(B) *Batches containing less than 5.7 percent but at least 5.59 percent alcohol.* If a batch of mixture contains less than 5.7 percent alcohol but at least 5.59 percent alcohol, without rounding, only a portion of the batch is considered to be 5.7 percent gasohol. That portion equals the number of gallons of alcohol in the batch multiplied by 17.544. Any remaining liquid in the mixture is excess liquid.

(v) *Tax on excess liquid.* If tax was imposed on the excess liquid in any gasohol at the gasohol production tax rate (as defined in paragraph (e)(1) of this section), the excess liquid in the batch is considered to be gasoline with respect to which there is a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the excess liquid at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is not allowed with respect to the excess liquid.

(vi) *Examples.* The following examples illustrate this paragraph (b)(2). In these examples, a gasohol blender creates a gasoline/alcohol mixture by pumping a specified amount of gasoline into an empty tank and then adding a specified amount of alcohol.

Example 1. Mixtures containing exactly 10 percent alcohol. The applicable delivery tickets show that the mixture is made with 7200 metered gallons of gasoline and 800 metered gallons of alcohol. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as 10 percent gasohol.

Example 2. Mixtures containing less than 10 percent alcohol but at least 9.8 percent

alcohol. The applicable delivery tickets show that the mixture is made with 7205 metered gallons of gasoline and 795 metered gallons of alcohol. Because the mixture contains less than 10 percent alcohol, but more than 9.8 percent alcohol (as determined based on the delivery tickets provided to the blender), 7950 gallons of the mixture qualify as 10 percent gasohol. If tax was imposed on the gasoline in the mixture at the gasohol production rate applicable to 10 percent gasohol, the remaining 50 gallons of the mixture (the excess liquid) are treated as gasoline with respect to which there was a failure to blend into gasohol for purposes of paragraph (f) of this section. If tax was imposed on the gasoline in the mixture at the rate of tax described in section 4081(a), a credit or refund under section 6427(f) is allowed only with respect to 7155 gallons of gasoline.

Example 3. Mixtures containing less than 5.59 percent alcohol. The applicable delivery tickets show that the mixture is made with 7568 metered gallons of gasoline and 436 metered gallons of alcohol. Because the mixture contains only 5.45 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

(3) *Gasohol blender. Gasohol blender* means any person that regularly buys gasoline and alcohol and produces gasohol for use in its trade or business or for resale.

(4) *Registered gasohol blender. Registered gasohol blender* means a person that is registered under section 4101 as a gasohol blender.

(c) *Rate of tax on gasoline removed or entered for gasohol production*—(1) *In general.* The rate of tax imposed on gasoline under § 48.4081–2(b) (relating to tax imposed at the terminal rack), § 48.4081–3(b)(1) (relating to tax imposed at the refinery), or § 48.4081–3(c)(1) (relating to tax imposed on entries) is the gasohol production tax rate if—

(i) The person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a taxable fuel registrant and a registered gasohol blender, and such person produces gasohol with the gasoline within 24 hours after removing or entering the gasoline; or

(ii) The gasoline is sold in connection with the removal or entry, the person liable for tax under § 48.4081–2(c)(1) (the position holder), § 48.4081–3(b)(3) (the refiner), or § 48.4081–3(c)(2) (the enterer) is a taxable fuel registrant and the person, at the time of the sale,—

(A) Has an unexpired certificate (as described in paragraph (c)(2) of this section) from the buyer; and

(B) Has no reason to believe that any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate referred to in paragraph (c)(1)(ii)(A) of this section is a statement that is to be provided by a registered gasohol blender that is signed under penalties of perjury by a person with authority to bind the registered gasohol blender, is in substantially the same form as the model certificate provided in paragraph (c)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date the registered gasohol blender provides a new certificate to the seller.

(C) The date the seller is notified by the Internal Revenue Service or the gasohol blender that the gasohol blender's registration has been revoked or suspended.

(ii) *Model certificate.*

Certificate of Registered Gasohol Blender

(To support sales of gasoline at the gasohol production tax rate under section 4081(c) of the Internal Revenue Code)

_____

Name, address, and employer identification number of seller

_____ (Buyer) certifies the following under penalties of perjury:

Buyer is registered as a gasohol blender with registration number _____. Buyer's registration has not been suspended or revoked by the Internal Revenue Service.

The gasoline bought under this certificate will be used by Buyer to produce gasohol (as defined in § 48.4081–6(b) of the Manufacturers and Retailers Excise Tax Regulations) within 24 hours after buying the gasoline.

Type of gasohol Buyer will produce (check one only):

_____ 10% gasohol
_____ 7.7% gasohol
_____ 5.7% gasohol

If the gasohol the Buyer will produce will contain ethanol, check here: _____

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here _____ and enter:

1. Account number _____
2. Number of gallons _____

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will not claim a credit or refund under section 6427(f) of the Internal Revenue Code for any gasoline covered by this certificate.

Buyer agrees to provide seller with a new certificate if any information on this certificate changes.

Buyer understands that Buyer's registration may be revoked if the gasoline covered by this certificate is resold or is used other than in Buyer's production of the type of gasohol identified above.

Buyer will reduce any alcohol mixture credit under section 40(b) by an amount equal to the benefit of the gasohol production tax rate under section 4081(c) for the gasohol to which this certificate relates.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(iii) *Use of Form 637 or letter of registration as a gasohol blender's certificate prohibited.* A copy of the certificate of registry (Form 637) or letter of registration issued to a gasohol blender by the Internal Revenue Service is not a gasohol blender's certificate described in paragraph (c)(2)(ii) of this section.

(d) *Rate of tax on gasohol removed or entered.* The rate of tax imposed on removals or entries of any gasohol under §§ 48.4081–2(b), 48.4081–3(b)(1), and 48.4081–3(c)(1) is the gasohol tax rate. The rate of tax imposed on removals and entries of excess liquid described in paragraph (b)(2) of this section is the rate of tax applicable to gasoline under section 4081(a).

(e) *Tax rates*—(1) *Gasohol production tax rate.* The gasohol production tax rate is the applicable rate of tax determined under section 4081(c)(2)(A).

(2) *Gasohol tax rate.* The gasohol tax rate is the applicable alcohol mixture rate determined under section 4081(c)(4)(A).

(f) *Later separation and failure to blend*—(1) *Later separation*—(i) *Imposition of tax.* A tax is imposed on the removal or sale of gasoline separated from gasohol with respect to which tax was imposed at a rate described in paragraph (e) of this section or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1).

(ii) *Liability for tax.* The person that owns the gasohol at the time gasoline is

separated from the gasohol is liable for the tax imposed under paragraph (f)(1)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed under paragraph (f)(1)(i) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the applicable gasohol production tax rate.

(2) *Failure to blend*—(i) *Imposition of tax.* Tax is imposed on the entry, removal, or sale of gasoline (including excess liquid described in paragraph (b)(2) of this section) with respect to which tax was imposed at a gasohol production tax rate if—

(A) The gasoline was not blended into gasohol; or

(B) The gasoline was blended into gasohol but the gasohol production tax rate applicable to the type of gasohol produced is greater than the rate of tax originally imposed on the gasoline.

(ii) *Liability for tax.* (A) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(i) of this section, the person liable for the tax imposed by paragraph (f)(2)(i) of this section is the person that was liable for tax on the entry or removal.

(B) In the case of gasoline with respect to which tax was imposed at the gasohol production tax rate under paragraph (c)(1)(ii) of this section, the person that bought the gasoline in connection with the entry or removal is liable for the tax imposed under paragraph (f)(2)(i) of this section.

(iii) *Rate of tax.* The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(A) of this section is the difference between the rate of tax applicable to gasoline not described in this section and the rate of tax previously imposed on the gasoline. The rate of tax imposed on gasoline described in paragraph (f)(2)(i)(B) of this section is the difference between the gasohol production tax rate applicable to the type of gasohol produced and the rate of tax previously imposed on the gasoline.

(iv) *Example.* The following example illustrates this paragraph (f)(2):

Example. (i) A registered gasohol blender bought gasoline in connection with a removal described in paragraph (c)(1)(ii) of this section. Based on the blender's certification (described in paragraph (c)(2) of this section) that the blender would produce 10 percent gasohol with the gasoline, tax at the gasohol production tax rate applicable to 10 percent gasohol was imposed on the removal.

(ii) The blender then produced a mixture by splash blending in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture was blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender) the entire mixture qualifies as 7.7 percent gasohol, rather than 10 percent gasohol.

(iii) Because the 7220 gallons of gasoline were taxed at the gasohol production tax rate applicable to 10 percent gasohol but the gasoline was blended into 7.7 percent gasohol, a failure to blend has occurred with respect to the gasoline. As the person that bought the gasoline in connection with the taxable removal, the blender is liable for the tax imposed under paragraph (f)(2)(i) of this section. The amount of tax imposed is the difference between—

(A) 7220 gallons times the gasohol production tax rate applicable to 7.7 percent gasohol; and

(B) 7220 gallons times the gasohol production tax rate applicable to 10 percent gasohol.

(iv) Because the gasohol does not contain exactly 7.7 percent alcohol, the benefit of the gasohol production tax rate with respect to the alcohol is less than the amount of the alcohol mixture credit under section 40(b) (determined before the application of section 40(c)). Accordingly, the blender may be entitled to claim an alcohol mixture credit for the alcohol used in the gasohol. Under section 40(c), however, the amount of the alcohol mixture credit must be reduced to take into account the benefit provided with respect to the alcohol by the gasohol production tax rate.

(g) Effective date. This section is effective August 7, 1995.

Par. 10. Section 48.4081–7 is amended as follows:

1. The heading for § 48.4081–7 is revised.

2. In paragraphs (a) and (b), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

3. Paragraphs (b)(4) and (c)(1) are revised.

4. In paragraph (c)(2), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

5. Paragraph (c)(3) is revised.

6. In paragraphs (c)(4)(i)(A) and (B), (ii)(A) and (B), and (iii), the language ''gasoline'' is removed each place it appears and ''taxable fuel'' is added in its place.

7. In paragraph (c)(4)(iv)(A), the language ''(or such other model statement as the Commissioner may prescribe)'' is added immediately after ''paragraph (c)(4)(iv)(B) of this section''.

8. In paragraph (c)(4)(iv)(B):

a. The description of line 4 is revised to read: ''Volume and type of taxable fuel sold''.

b. In the first paragraph following line 4 the language ''gasoline'' is removed and ''taxable fuel'' is added in its place.

9. Paragraph (c)(5) is removed.

10. Paragraph (d) is revised.

11. Paragraph (f), *Example 1*, paragraph (i), is amended by:

a. Removing the language ''1993'' in the first and fourth sentences and adding ''1996'' in its place.

b. Removing the language ''paragraph (c)(2)'' and adding ''paragraph (c)'' in its place.

12. Paragraph (f), *Example 1*, paragraph (ii), is amended by removing the language ''1993'' in the first and second sentences and adding ''1996'' in its place.

13. Paragraph (g) is revised.

The revisions read as follows:

§ 48.4081–7 Taxable fuel; conditions for refunds of taxable fuel tax under section 4081(e).

* * * * *

(b) * * *

(4) The person that paid the first tax to the government has met the reporting requirements of paragraph (c) of this section.

(c) * * * (1) *Reporting by persons paying the first tax.* Except as provided in paragraph (c)(3) of this section, the person that paid the first tax under § 48.4081–3 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in paragraph (c)(2) of this section (or such other model report as the Commissioner may prescribe) and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be filed with the return to which the report relates (or at such other time, or in such other manner, as prescribed by the Commissioner).

* * * * *

(3) *Optional reporting for certain taxable events.* Paragraph (c)(1) of this section does not apply with respect to a tax imposed under § 48.4081–2 (removal at a terminal rack), § 48.4081–3(c)(1)(ii) (nonbulk entries into the United States), or § 48.4081–3(g) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under section 4081 with respect to the taxable fuel, that person should (but is not required to) file a first taxpayer's report.

* * * * *

(d) *Form and content of claim*—(1) *In general.* The following rules apply to claims for refund under section 4081(e):

(i) The claim must be made by the person that paid the second tax to the government and must include all the information described in paragraph (d)(2) of this section.

(ii) The claim must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions on the form. The form should be marked *Section 4081(e) Claim* at the top. Section 4081(e) claims must not be included with a claim for a refund under any other provision of the Internal Revenue Code.

(2) *Information to be included in the claim.* Each claim for a refund under section 4081(e) must contain the following information with respect to the taxable fuel covered by the claim:

(i) Volume and type of taxable fuel.

(ii) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(iii) Amount of second tax that claimant paid to the government and a statement that claimant has not included the amount of this tax in the sales price of the taxable fuel to which this claim relates and has not collected that amount from the person that bought the taxable fuel from claimant.

(iv) Name, address, and employer identification number of the person that paid the first tax to the government.

(v) A copy of the first taxpayer's report that relates to the taxable fuel covered by the claim.

(vi) If the taxable fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that taxable fuel.

* * * * *

(g) *Effective date.* This section is effective in the case of taxable fuel with respect to which the first tax is imposed after September 30, 1995.

Par. 11. Section 48.4101–3 is added to read as follows:

§ 48.4101–3 Registration.

(a) A refiner that is registered under section 4101 may treat itself with respect to the bulk removal of any batch of gasohol from its refinery as a person that is not registered under section 4101. See § 48.4081–3(b)(1)(iii).

(b) This section is effective October 1, 1995.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 13. In § 602.101, paragraph (c) is amended by removing the entry for 48.4041–21 from the table and adding the entry ''48.4041–21.....1545–1270'' in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 25, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19284 Filed 8–4–95; 8:45 am]

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26 CFR Part 301

[TD 8610]

RIN 1545–AP98

Taxable Mortgage Pools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to taxable mortgage pools. This action is necessary because of changes made to the law by the Tax Reform Act of 1986. The final regulations provide guidance to entities for determining whether they are subject to the taxable mortgage pool rules.

EFFECTIVE DATE: These regulations are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Arnold P. Golub or Marshall D. Feiring, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (FI–55–91) under section 7701(i) of the Internal Revenue Code was published in the **Federal Register** on December 23, 1992 (57 FR 61029). Written comments relating to this notice were received, but no public hearing was requested or held. After consideration of the comments, the proposed regulations under section 7701(i) are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 301.7701(i)–1(c)(1)—Basis Used To Determine the Composition of an Entity's Assets

Among other requirements, to be classified as a taxable mortgage pool, substantially all of an entity's assets must consist of debt obligations, and more than 50 percent of those debt obligations must consist of real estate mortgages (or interests therein). Under the proposed regulations, an entity must apply these tests using the tax bases of its assets. One commentator, however, suggested that the entity should have the choice of using either the tax bases of its assets or the fair market value of its assets. The IRS and Treasury believe that using fair market value for the asset composition tests creates uncertainty and administrative difficulties. The final regulations, therefore, retain the rule in the proposed regulations.

Section 301.7701(i)–1(c)(5)—Seriously Impaired Real Estate Mortgages Not Treated as Debt Obligations

Under the proposed regulations, real estate mortgages that are seriously impaired are not treated as debt obligations for purposes of the asset composition tests. Whether real estate mortgages are seriously impaired generally depends on all the facts and circumstances. The proposed regulations, however, provide two safe harbors. Under those provisions, whether mortgages are seriously impaired depends only on the number of days the payments on the mortgages are delinquent (more than 89 days for single family residential real estate mortgages and more than 59 days for multi-family residential and commercial real estate mortgages). The safe harbors are not available, however, if an entity is receiving or anticipates receiving certain payments on the mortgages such as payments of principal and interest that are substantial and relatively certain as to amount.

Several commentators have asked for additional safe harbors based on factors other than the number of days a mortgage is delinquent. For example, one suggested a safe harbor for mortgages having excessively high loan to value ratios. Others suggested a safe harbor for mortgages that are purchased at a substantial discount.

The final regulations retain, unchanged, the safe harbors of the proposed regulations. The IRS and Treasury believe that no single factor is as clear an indication that a mortgage is seriously impaired as days delinquent. For example, a mortgage may be purchased at a discount for a variety of reasons, some of which bear no relation to the quality of the mortgage. To provide further guidance, however, the final regulations list some of the facts and circumstances that should be considered in determining whether a mortgage is seriously impaired.

Another commentator has criticized the safe harbors because they are unavailable if an entity anticipates receiving certain payments on a delinquent mortgage. The commentator is concerned that a test based on whether an entity anticipates receiving payments on a mortgage is both subjective and open-ended. To address this concern, the final regulations create a new rule, under which if an entity makes reasonable efforts to resolve a

mortgage and fails to do so within a designated time, then the entity is treated as not having anticipated receiving payments on the mortgage.

Section 301.7701(i)–1(d)(3)(ii)—Obligations Secured by Other Obligations Treated as Principally Secured by Real Property

Under the proposed regulations, an obligation is treated as a real estate mortgage if it is principally secured by an interest in real property. Whether an obligation is principally secured by an interest in real property ordinarily depends on the value of the real property relative to the amount of the obligation. The proposed regulations also provide that an obligation secured by real estate mortgages is treated as an obligation secured by an interest in real property. That obligation, therefore, may itself qualify as a real estate mortgage.

The final regulations retain these rules and clarify how they are applied if an obligation is secured by both real estate mortgages and other property. Under the final regulations, such an obligation is treated as secured by real property, but only to the extent of the combined value of the real estate mortgages and any real property that secures the obligation.

Section 301.7701(i)–1(f)(3)—Certain Liquidating Entities Not Treated as Taxable Mortgage Pools

The proposed regulations provide that an entity formed to liquidate real estate mortgages is not treated as a taxable mortgage pool if the entity meets four conditions. One condition is that the entity must liquidate within three years of acquiring its first asset. If the entity fails to liquidate within that time, then the payments the entity receives on its assets must be paid through to the holders of the entity's liabilities in proportion to the adjusted issue prices of the liabilities.

One commentator has asked that this condition be modified. The commentator suggested that either the three- year liquidation period should be extended to four years or an entity should have to liquidate only a certain percentage of its assets within the three-year period. The commentator alternatively suggested that an entity should be treated as meeting the condition if it satisfies fifty percent of the issue price of each of its liabilities using liquidation proceeds.

The final regulations retain the three-year liquidation rule. The IRS and Treasury believe that performing mortgages that conform to current underwriting standards may easily be disposed of within that time. Further, the market has developed to the point where three years is also ample time to dispose of non-performing mortgages. Mortgages that require more than three years for disposal are more likely to be seriously impaired, and a taxpayer who holds a sufficient quantity can avoid taxable mortgage pool classification by other means. The final regulations, therefore, do not change the basic rules in the proposed regulations.

Section 301.7701–1(g)—Anti-Avoidance Rules

An anti-avoidance rule in the proposed regulations authorizes the Commissioner to disregard or make other adjustments to any transaction if the transaction is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. This authority is flexible, and among other things, includes the ability to override any safe harbor otherwise available under the regulations. The final regulations retain the anti-avoidance rule and provide two additional examples illustrating its exercise.

Section 301.7701(i)–4—Certain Governmental Entities Not Treated as Taxable Mortgage Pools

The proposed regulations provide that an entity is not classified as a taxable mortgage pool if: (1) The entity issuing the debt obligations is a State, the District of Columbia, or a political subdivision within the meaning of § 1.103–1(b), or is empowered to issue obligations on behalf of one of the foregoing; (2) the entity issues the debt obligations in the performance of a governmental purpose; and (3) the entity holds the remaining interest in any asset that supports the outstanding debt obligations until those obligations are satisfied.

Two commentators have asked that the third requirement be dropped because it prevents a governmental entity from reselling a package of mortgages. The IRS and Treasury believe, however, that dropping the requirement is inappropriate. Typically, when a mortgage pool is used to create multiple class debt, tax gains in excess of economic gains are generated during the early part of the pool's life and tax losses in excess of economic losses are generated during the latter part of the pool's life. Without the third requirement, a governmental entity can hold an interest in the pool during the early period and then convey that interest to a taxable entity during the latter period. Moreover, requiring a governmental entity to maintain an interest in pool assets is consistent with the second requirement that debt obligations supported by the pool are issued in performance of a governmental purpose.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Marshall D. Feiring and Arnold P. Golub, Office of Assistant Chief Counsel (Financial Institutions and Products), and Carol E. Schultze, formerly of that office. However, other personnel from the IRS and Treasury Department participated in their development.

The Office of Assistant Chief Counsel (Financial Institutions and Products) notes with sadness the passing of Susan E. Overlander, who contributed significantly to this project.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.7701(i)–1(g)(1) also issued under 26 U.S.C. 7701(i)(2)(D).

Section 301.7701(i)–4(b) also issued under 26 U.S.C. 7701(i)(3). * * *

Par. 2. Sections 301.7701(i)–0 through 301.7701(i)–4 are added to read as follows:

§ 301.7701(i)–0 Outline of taxable mortgage pool provisions.

This section lists the major paragraphs contained in §§ 301.7701(i)–1 through 301.7701(i)–4.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) Purpose.
(b) In general.
(c) Asset composition tests.
(1) Determination of amount of assets.
(2) Substantially all.
(i) In general.
(ii) Safe harbor.
(3) Equity interests in pass-through arrangements.
(4) Treatment of certain credit enhancement contracts.
(i) In general.
(ii) Credit enhancement contract defined.
(5) Certain assets not treated as debt obligations.
(i) In general.
(ii) Safe harbor.
(A) In general.
(B) Payments with respect to a mortgage defined.
(C) Entity treated as not anticipating payments.
(d) Real estate mortgages or interests therein defined.
(1) In general.
(2) Interests in real property and real property defined.
(i) In general.
(ii) Manufactured housing.
(3) Principally secured by an interest in real property.
(i) Tests for determining whether an obligation is principally secured.
(A) The 80 percent test.
(B) Alternative test.
(ii) Obligations secured by real estate mortgages (or interests therein), or by combinations of real estate mortgages (or interests therein) and other assets.
(A) In general.
(B) Example.
(e) Two or more maturities.
(1) In general.
(2) Obligations that are allocated credit risk unequally.
(3) Examples.
(f) Relationship test.
(1) In general.
(2) Payments on asset obligations defined.
(3) Safe harbor for entities formed to liquidate assets.
(g) Anti-avoidance rules.
(1) In general.
(2) Certain investment trusts.
(3) Examples.

§ 301.7701(i)–2 Special rules for portions of entities.

(a) Portion defined.
(b) Certain assets and rights to assets disregarded.
(1) Credit enhancement assets.
(2) Assets unlikely to service obligations.
(3) Recourse.
(c) Portion as obligor.
(1) In general.
(2) Example.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) Effective dates.
(b) Entities in existence on December 31, 1991.
(1) In general.
(2) Special rule for certain transfers.
(3) Related debt obligation.
(4) Example.
(c) Duration of taxable mortgage pool classification.
(1) Commencement and duration.
(2) Testing day defined.

§ 301.7701(i)–4 Special rules for certain entities.

(a) States and municipalities.
(1) In general.
(2) Governmental purpose.
(3) Determinations by the Commissioner.
(b) REITs. [Reserved]
(c) Subchapter S corporations.
(1) In general.
(2) Portion of an S corporation treated as a separate corporation.

§ 301.7701(i)–1 Definition of a taxable mortgage pool.

(a) *Purpose.* This section provides rules for applying section 7701(i), which defines taxable mortgage pools. The purpose of section 7701(i) is to prevent income generated by a pool of real estate mortgages from escaping Federal income taxation when the pool is used to issue multiple class mortgage-backed securities. The regulations in this section and in §§ 301.7701(i)–2 through 301.7701(i)–4 are to be applied in accordance with this purpose. The taxable mortgage pool provisions apply to entities or portions of entities that qualify for REMIC status but do not elect to be taxed as REMICs as well as to certain entities or portions of entities that do not qualify for REMIC status.

(b) *In general.* (1) A taxable mortgage pool is any entity or portion of an entity (as defined in § 301.7701(i)–2) that satisfies the requirements of section 7701(i)(2)(A) and this section as of any testing day (as defined in § 301.7701(i)–3(c)(2)). An entity or portion of an entity satisfies the requirements of section 7701(i)(2)(A) and this section if substantially all of its assets are debt obligations, more than 50 percent of those debt obligations are real estate mortgages, the entity is the obligor under debt obligations with two or more maturities, and payments on the debt obligations under which the entity is obligor bear a relationship to payments on the debt obligations that the entity holds as assets.

(2) Paragraph (c) of this section provides the tests for determining whether substantially all of an entity's assets are debt obligations and for determining whether more than 50 percent of its debt obligations are real estate mortgages. Paragraph (d) of this section defines real estate mortgages for purposes of the 50 percent test. Paragraph (e) of this section defines two or more maturities and paragraph (f) of this section provides rules for determining whether debt obligations bear a relationship to the assets held by an entity. Paragraph (g) of this section provides anti-avoidance rules. Section 301.7701(i)–2 provides rules for applying section 7701(i) to portions of entities and § 301.7701(i)–3 provides effective dates. Section 301.7701(i)–4 provides special rules for certain entities. For purposes of the regulations under section 7701(i), the term entity includes a portion of an entity (within the meaning of section 7701(i)(2)(B)), unless the context clearly indicates otherwise.

(c) *Asset composition tests*—(1) *Determination of amount of assets.* An entity must use the Federal income tax basis of an asset for purposes of determining whether substantially all of its assets consist of debt obligations (or interests therein) and whether more than 50 percent of those debt obligations (or interests) consist of real estate mortgages (or interests therein). For purposes of this paragraph, an entity determines the basis of an asset with the assumption that the entity is not a taxable mortgage pool.

(2) *Substantially all*—(i) *In general.* Whether substantially all of the assets of an entity consist of debt obligations (or interests therein) is based on all the facts and circumstances.

(ii) *Safe harbor.* Notwithstanding paragraph (c)(2)(i) of this section, if less than 80 percent of the assets of an entity consist of debt obligations (or interests therein), then less than substantially all of the assets of the entity consist of debt obligations (or interests therein).

(3) *Equity interests in pass-through arrangements.* The equity interest of an entity in a partnership, S corporation, trust, REIT, or other pass-through arrangement is deemed to have the same composition as the entity's share of the assets of the pass-through arrangement. For example, if an entity's stock interest in a REIT has an adjusted basis of $20,000, and the assets of the REIT consist of equal portions of real estate mortgages and other real estate assets, then the entity is treated as holding $10,000 of real estate mortgages and $10,000 of other real estate assets.

(4) *Treatment of certain credit enhancement contracts*—(i) *In general.* A credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) is not treated as a separate asset of an entity for purposes of the asset composition tests set forth in section

7701(i)(2)(A)(i), but instead is treated as part of the asset to which it relates. Furthermore, any collateral supporting a credit enhancement contract is not treated as an asset of an entity solely because it supports the guarantee represented by that contract.

(ii) *Credit enhancement contract defined.* For purposes of this section, a credit enhancement contract is any arrangement whereby a person agrees to guarantee full or partial payment of the principal or interest payable on a debt obligation (or interest therein) or on a pool of such obligations (or interests), or full or partial payment on one or more classes of debt obligations under which an entity is the obligor, in the event of defaults or delinquencies on debt obligations, unanticipated losses or expenses incurred by the entity, or lower than expected returns on investments. Types of credit enhancement contracts may include, but are not limited to, pool insurance contracts, certificate guarantee insurance contracts, letters of credit, guarantees, or agreements whereby an entity, a mortgage servicer, or other third party agrees to make advances (regardless of whether, under the terms of the agreement, the payor is obligated, or merely permitted, to make those advances). An agreement by a debt servicer to advance to an entity out of its own funds an amount to make up for delinquent payments on debt obligations is a credit enhancement contract. An agreement by a debt servicer to pay taxes and hazard insurance premiums on property securing a debt obligation, or other expenses incurred to protect an entity's security interests in the collateral in the event that the debtor fails to pay such taxes, insurance premium, or other expenses, is a credit enhancement contract.

(5) *Certain assets not treated as debt obligations*—(i) *In general.* For purposes of section 7701(i)(2)(A), real estate mortgages that are seriously impaired are not treated as debt obligations. Whether a mortgage is seriously impaired is based on all the facts and circumstances including, but not limited to: the number of days delinquent, the loan-to-value ratio, the debt service coverage (based upon the operating income from the property), and the debtor's financial position and stake in the property. However, except as provided in paragraph (c)(5)(ii) of this section, no single factor in and of itself is determinative of whether a loan is seriously impaired.

(ii) *Safe harbor*—(A) *In general.* Unless an entity is receiving or anticipates receiving payments with respect to a mortgage, a single family residential real estate mortgage is seriously impaired if payments on the mortgage are more than 89 days delinquent, and a multi-family residential or commercial real estate mortgage is seriously impaired if payments on the mortgage are more than 59 days delinquent. Whether an entity anticipates receiving payments with respect to a mortgage is based on all the facts and circumstances.

(B) *Payments with respect to a mortgage defined.* For purposes of paragraph (c)(5)(ii)(A) of this section, payments with respect to a mortgage mean any payments on the mortgage as defined in paragraph (f)(2)(i) of this section if those payments are substantial and relatively certain as to amount and any payments on the mortgage as defined in paragraph (f)(2) (ii) or (iii) of this section.

(C) *Entity treated as not anticipating payments.* With respect to any testing day (as defined in § 301.7701(i)–3(c)(2)), an entity is treated as not having anticipated receiving payments on the mortgage as defined in paragraph (f)(2)(i) of this section if 180 days after the testing day, and despite making reasonable efforts to resolve the mortgage, the entity is not receiving such payments and has not entered into any agreement to receive such payments.

(d) *Real estate mortgages or interests therein defined*—(1) *In general.* For purposes of section 7701(i)(2)(A)(i), the term real estate mortgages (or interests therein) includes all—

(i) Obligations (including participations or certificates of beneficial ownership therein) that are principally secured by an interest in real property (as defined in paragraph (d)(3) of this section);

(ii) Regular and residual interests in a REMIC; and

(iii) Stripped bonds and stripped coupons (as defined in section 1286(e)(2) and (3)) if the bonds (as defined in section 1286(e)(1)) from which such stripped bonds or stripped coupons arose would have qualified as real estate mortgages or interests therein.

(2) *Interests in real property and real property defined*—(i) *In general.* The definition of interests in real property set forth in § 1.856–3(c) of this chapter and the definition of real property set forth in § 1.856–3(d) of this chapter apply to define those terms for purposes of paragraph (d) of this section.

(ii) *Manufactured housing.* For purposes of this section, the definition of real property includes manufactured housing, provided the properties qualify as single family residences under section 25(e)(10) and without regard to the treatment of the properties under state law.

(3) *Principally secured by an interest in real property*—(i) *Tests for determining whether an obligation is principally secured.* For purposes of paragraph (d)(1) of this section, an obligation is principally secured by an interest in real property only if it satisfies either the test set out in paragraph (d)(3)(i)(A) of this section or the test set out in paragraph (d)(3)(i)(B) of this section.

(A) *The 80 percent test.* An obligation is principally secured by an interest in real property if the fair market value of the interest in real property (as defined in paragraph (d)(2) of this section) securing the obligation was at least equal to 80 percent of the adjusted issue price of the obligation at the time the obligation was originated (that is, the issue date). For purposes of this test, the fair market value of the real property interest is first reduced by the amount of any lien on the real property interest that is senior to the obligation being tested, and is reduced further by a proportionate amount of any lien that is in parity with the obligation being tested.

(B) *Alternative test.* An obligation is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire, improve, or protect an interest in real property that, at the origination date, is the only security for the obligation. For purposes of this test, loan guarantees made by Federal, state, local governments or agencies, or other third party credit enhancement, are not viewed as additional security for a loan. An obligation is not considered to be secured by property other than real property solely because the obligor is personally liable on the obligation.

(ii) *Obligations secured by real estate mortgages (or interests therein), or by combinations of real estate mortgages (or interests therein) and other assets*—(A) *In general.* An obligation secured only by real estate mortgages (or interests therein), as defined in paragraph (d)(1) of this section, is treated as an obligation secured by an interest in real property to the extent of the value of the real estate mortgages (or interests therein). An obligation secured by both real estate mortgages (or interests therein) and other assets is treated as an obligation secured by an interest in real property to the extent of both the value of the real estate mortgages (or interests therein) and the value of so much of the other assets that constitute real property. Thus, under this paragraph, a collateralized mortgage

obligation may be an obligation principally secured by an interest in real property. This section is applicable only to obligations issued after December 31, 1991.

(B) *Example.* The following example illustrates the principles of this paragraph (d)(3)(ii):

Example. At the time it is originated, an obligation has an adjusted issue price of $300,000 and is secured by a $70,000 loan principally secured by an interest in a single family home, a fifty percent co-ownership interest in a $400,000 parcel of land, and $80,000 of stock. Under paragraph (d)(3)(ii)(A) of this section, the obligation is treated as secured by interests in real property and under paragraph (d)(3)(i)(A) of this section, the obligation is treated as principally secured by interests in real property.

(e) *Two or more maturities*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), debt obligations have two or more maturities if they have different stated maturities or if the holders of the obligations possess different rights concerning the acceleration of or delay in the maturities of the obligations.

(2) *Obligations that are allocated credit risk unequally.* Debt obligations that are allocated credit risk unequally do not have, by that reason alone, two or more maturities. Credit risk is the risk that payments of principal or interest will be reduced or delayed because of a default on an asset that supports the debt obligations.

(3) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. (i) Corporation M transfers a pool of real estate mortgages to a trustee in exchange for Class A bonds and a certificate representing the residual beneficial ownership of the pool. All Class A bonds have a stated maturity of March 1, 2002, but if cash flows from the real estate mortgages and investments are sufficient, the trustee may select one or more bonds at random and redeem them earlier.

(ii) The Class A bonds do not have different maturities. Each outstanding Class A bond has an equal chance of being redeemed because the selection process is random. The holders of the Class A bonds, therefore, have identical rights concerning the maturities of their obligations.

Example 2. (i) Corporation N transfers a pool of real estate mortgages to a trustee in exchange for Class C bonds, Class D bonds, and a certificate representing the residual beneficial ownership of the pool. The Class D bonds are subordinate to the Class C bonds so that cash flow shortfalls due to defaults or delinquencies on the real estate mortgages are borne first by the Class D bond holders. The terms of the bonds are otherwise identical in all relevant aspects except that the Class D bonds carry a higher coupon rate because of the subordination feature.

(ii) The Class C bonds and the Class D bonds share credit risk unequally because of the subordination feature. However, neither this difference, nor the difference in interest rates, causes the bonds to have different maturities. The result is the same if, in addition to the other terms described in paragraph (i) of this *Example 2*, the Class C bonds are accelerated as a result of the issuer becoming unable to make payments on the Class C bonds as they become due.

(f) *Relationship test*—(1) *In general.* For purposes of section 7701(i)(2)(A)(iii), payments on debt obligations under which an entity is the obligor (liability obligations) bear a relationship to payments (as defined in paragraph (f)(2) of this section) on debt obligations an entity holds as assets (asset obligations) if under the terms of the liability obligations (or underlying arrangement) the timing and amount of payments on the liability obligations are in large part determined by the timing and amount of payments or projected payments on the asset obligations. For purposes of the relationship test, any payment arrangement, including a swap or other hedge, that achieves a substantially similar result is treated as satisfying the test. For example, any arrangement where the timing and amount of payments on liability obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the asset obligations is treated as satisfying the relationship test.

(2) *Payments on asset obligations defined.* For purposes of section 7701(i)(2)(A)(iii) and this section, payments on asset obligations include—

(i) A payment of principal or interest on an asset obligation, including a prepayment of principal, a payment under a credit enhancement contract (as defined in paragraph (c)(4)(ii) of this section) and a payment from a settlement at a discount (other than a substantial discount);

(ii) A payment from a settlement at a substantial discount, but only if the settlement is arranged, whether in writing or otherwise, prior to the issuance of the liability obligations; and

(iii) A payment from the foreclosure on or sale of an asset obligation, but only if the foreclosure or sale is arranged, whether in writing or otherwise, prior to the issuance of the liability obligations.

(3) *Safe harbor for entities formed to liquidate assets.* Payments on liability obligations of an entity do not bear a relationship to payments on asset obligations of the entity if—

(i) The entity's organizational documents manifest clearly that the entity is formed for the primary purpose of liquidating its assets and distributing proceeds of liquidation;

(ii) The entity's activities are all reasonably necessary to and consistent with the accomplishment of liquidating assets;

(iii) The entity plans to satisfy at least 50 percent of the total issue price of each of its liability obligations having a different maturity with proceeds from liquidation and not with scheduled payments on its asset obligations; and

(iv) The terms of the entity's liability obligations (or underlying arrangement) provide that within three years of the time it first acquires assets to be liquidated the entity either—

(A) Liquidates; or

(B) Begins to pass through without delay all payments it receives on its asset obligations (less reasonable allowances for expenses) as principal payments on its liability obligations in proportion to the adjusted issue prices of the liability obligations.

(g) *Anti-avoidance rules*—(1) *In general.* For purposes of determining whether an entity meets the definition of a taxable mortgage pool, the Commissioner can disregard or make other adjustments to a transaction (or series of transactions) if the transaction (or series) is entered into with a view to achieving the same economic effect as that of an arrangement subject to section 7701(i) while avoiding the application of that section. The Commissioner's authority includes treating equity interests issued by a non-REMIC as debt if the entity issues equity interests that correspond to maturity classes of debt.

(2) *Certain investment trusts.* Notwithstanding paragraph (g)(1) of this section, an ownership interest in an entity that is classified as a trust under § 301.7701–4(c) will not be treated as a debt obligation of the trust.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. (i) Partnership P, in addition to its other investments, owns $10,000,000 of mortgage pass-through certificates guaranteed by FNMA (FNMA Certificates). On May 15, 1997, Partnership P transfers the FNMA Certificates to Trust 1 in exchange for 100 Class A bonds and Certificate 1. The Class A bonds, under which Trust 1 is the obligor, have a stated principal amount of $5,000,000 and bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)–1(f)). Certificate 1 represents the residual beneficial ownership of the FNMA Certificates.

(ii) On July 5, 1997, with a view to avoiding the application of section 7701(i), Partnership P transfers Certificate 1 to Trust 2 in exchange for 100 Class B bonds and Certificate 2. The Class B bonds, under which

Trust 2 is the obligor, have a stated principal amount of $5,000,000, bear a relationship to the FNMA Certificates (within the meaning of § 301.7701(i)-1(f)), and have a different maturity than the Class A bonds (within the meaning of § 301.7701(i)-1(e)). Certificate 2 represents the residual beneficial ownership of Certificate 1.

(iii) For purposes of determining whether Trust 1 is classified as a taxable mortgage pool, the Commissioner can disregard the separate existence of Trust 2 and treat Trust 1 and Trust 2 as a single trust.

Example 2. (i) Corporation Q files a consolidated return with its two wholly-owned subsidiaries, Corporation R and Corporation S. Corporation R is in the business of building and selling single family homes. Corporation S is in the business of financing sales of those homes.

(ii) On August 10, 1998, Corporation S transfers a pool of its real estate mortgages to Trust 3, taking back Certificate 3 which represents beneficial ownership of the pool. On September 25, 1998, with a view to avoiding the application of section 7701(i), Corporation R issues bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)-1(f)) to the real estate mortgages in Trust 3. The holders of the bonds have an interest in a credit enhancement contract that is written by Corporation S and collateralized with Certificate 3.

(iii) For purposes of determining whether Trust 3 is classified as a taxable mortgage pool, the Commissioner can treat Trust 3 as the obligor of the bonds issued by Corporation R.

Example 3. (i) Corporation X, in addition to its other assets, owns $110,000,000 in Treasury securities. From time to time, Corporation X acquires pools of real estate mortgages, which it immediately uses to issue multiple-class debt obligations.

(ii) On October 1, 1996, Corporation X transfers $20,000,000 in Treasury securities to Trust 4 in exchange for Class C bonds, Class D bonds, Class E bonds, and Certificate 4. Trust 4 is the obligor of the bonds. The different classes of bonds have the same stated maturity date, but if cash flows from the Trust 4 assets exceed the amounts needed to make interest payments, the trustee uses the excess to retire the classes of bonds in alphabetical order. Certificate 4 represents the residual beneficial ownership of the Treasury securities.

(iii) With a view to avoiding the application of section 7701(i), Corporation X reserves the right to replace any Trust 4 asset with real estate mortgages or guaranteed mortgage pass-through certificates. In the event the right is exercised, cash flows on the real estate mortgages and guaranteed pass-through certificates will be used in the same manner as cash flows on the Treasury securities. Corporation X exercises this right of replacement on February 1, 1997.

(iv) For purposes of determining whether Trust 4 is classified as a taxable mortgage pool, the Commissioner can treat February 1, 1997, as a testing day (within the meaning of § 301.7701(i)-3(c)(2)). The result is the same if Corporation X has an obligation, rather than a right, to replace the Trust 4 assets with real estate mortgages and guaranteed pass-through certificates.

Example 4. (i) Corporation Y, in addition to its other assets, owns $1,900,000 in obligations secured by personal property. On November 1, 1995, Corporation Y begins negotiating a $2,000,000 loan to individual A. As security for the loan, A offers a first deed of trust on land worth $1,700,000.

(ii) With a view to avoiding the application of section 7701(i), Corporation Y induces A to place the land in a partnership in which A will have a 95 percent interest and agrees to accept the partnership interest as security for the $2,000,000 loan. Thereafter, the loan to A, together with the $1,900,000 in obligations secured by personal property, are transferred to Trust 5 and used to issue bonds that have different maturities (within the meaning of § 301.7701(i)-1(e)) and that bear a relationship (within the meaning of § 301.7701(i)-1(f)) to the $1,900,000 in obligations secured by personal property and the loan to A.

(iii) For purposes of determining whether Trust 5 is a taxable mortgage pool, the Commissioner can treat the loan to A as an obligation secured by an interest in real property rather than as an obligation secured by an interest in a partnership.

Example 5. (i) Corporation Z, in addition to its other assets, owns $3,000,000 in notes secured by interests in retail shopping centers. Partnership L, in addition to its other assets, owns $20,000,000 in notes that are principally secured by interests in single family homes and $3,500,000 in notes that are principally secured by interests in personal property.

(ii) On December 1, 1995, Partnership L asks Corporation Z for two separate loans, one in the amount of $9,375,000 and another in the amount of $625,000. Partnership L offers to collateralize the $9,375,000 loan with $10,312,500 of notes secured by interests in single family homes and the $625,000 loan with $750,000 of notes secured by interests in personal property. Corporation Z has made similar loans to Partnership L in the past.

(iii) With a view to avoiding the application of section 7701(i), Corporation Z induces Partnership L to accept a single $10,000,000 loan and to post as collateral $7,500,000 of the notes secured by interests in single family homes and all $3,500,000 of the notes secured by interests in personal property. Ordinarily, Corporation Z would not make a loan on these terms. Thereafter, the loan to Partnership L, together with the $3,000,000 in notes secured by interests in retail shopping centers, are transferred to Trust 6 and used to issue bonds that have different maturities (within the meaning of § 301.7701(i)–1(e)) and that bear a relationship (within the meaning of § 301.7701(i)–1(f)) to the loans secured by interests in retail shopping centers and the loan to Partnership L.

(iv) For purposes of determining whether Trust 6 is a taxable mortgage pool, the Commissioner can treat the $10,000,000 loan to Partnership L as consisting of a $9,375,000 obligation secured by interests in real property and a $625,000 obligation secured by interests in personal property. Under § 301.7701(i)–1(d)(3)(ii)(A), the notes secured by single family homes are treated as $7,500,000 of interests in real property. Under § 301.7701(i)–1(d)(3)(i)(A), $7,500,000 of interests in real property are sufficient to treat the $9,375,000 obligation as principally secured by an interest in real property ($7,500,000 equals 80 percent of $9,375,000).

§ 301.7701(i)–2 Special rules for portions of entities.

(a) *Portion defined.* Except as provided in paragraph (b) of this section and § 301.7701(i)–1, a portion of an entity includes all assets that support one or more of the same issues of debt obligations. For this purpose, an asset supports a debt obligation if, under the terms of the debt obligation (or underlying arrangement), the timing and amount of payments on the debt obligation are in large part determined, either directly or indirectly, by the timing and amount of payments or projected payments on the asset or a group of assets that includes the asset. Indirect payment arrangements include, for example, a swap or other hedge, or arrangements where the timing and amount of payments on the debt obligations are determined by reference to a group of assets (or an index or other type of model) that has an expected payment experience similar to that of the assets. For purposes of this paragraph, the term payments includes all proceeds and receipts from an asset.

(b) *Certain assets and rights to assets disregarded*—(1) *Credit enhancement assets.* An asset that qualifies as a credit enhancement contract (as defined in § 301.7701(i)–1(c)(4)(ii)) is not included in a portion as a separate asset, but is treated as part of the assets in the portion to which it relates under § 301.7701(i)–1(c)(4)(i). An asset that does not qualify as a credit enhancement contract (as defined in § 301.7701(i)–1(c)(4)(ii)), but that nevertheless serves the same function as a credit enhancement contract, is not included in a portion as a separate asset or otherwise.

(2) *Assets unlikely to service obligations.* A portion does not include assets that are unlikely to produce any significant cash flows for the holders of the debt obligations. This paragraph applies even if the holders of the debt obligations are legally entitled to cash flows from the assets. Thus, for example, even if the sale of a building would cause a series of debt obligations to be redeemed, the building is not included in a portion if it is not likely to be sold.

(3) *Recourse.* An asset is not included in a portion solely because the holders

of the debt obligations have recourse to the holder of that asset.

(c) *Portion as obligor*—(1) *In general.* For purposes of section 7701(i)(2)(A)(ii), a portion of an entity is treated as the obligor of all debt obligations supported by the assets in that portion.

(2) *Example.* The following example illustrates the principles of this section:

Example. (i) Corporation Z owns $1,000,000,000 in assets including an office complex and $90,000,000 of real estate mortgages.

(ii) On November 30, 1998, Corporation Z issues eight classes of bonds, Class A through Class H. Each class is secured by a separate letter of credit and by a lien on the office complex. One group of the real estate mortgages supports Class A through Class D, another group supports Class E through Class G, and a third group supports Class H. It is anticipated that the cash flows from each group of mortgages will service its related bonds.

(iii) Each of the following constitutes a separate portion of Corporation Z: the group of mortgages supporting Class A through Class D; the group of mortgages supporting Class E through Class G; and the group of mortgages supporting Class H. No other asset is included in any of the three portions notwithstanding the lien of the bonds on the office complex and the fact that Corporation Z is the issuer of the bonds. The letters of credit are treated as incidents of the mortgages to which they relate.

(iv) For purposes of section 7701(i)(2)(A)(ii), each portion described above is treated as the obligor of the bonds of that portion, notwithstanding the fact that Corporation Z is the legal obligor with respect to the bonds.

§ 301.7701(i)–3 Effective dates and duration of taxable mortgage pool classification.

(a) *Effective dates.* Except as otherwise provided, the regulations under section 7701(i) are effective and applicable September 6, 1995.

(b) *Entities in existence on December 31, 1991*—(1) *In general.* For transitional rules concerning the application of section 7701(i) to entities in existence on December 31, 1991, see section 675(c) of the Tax Reform Act of 1986.

(2) *Special rule for certain transfers.* A transfer made to an entity on or after September 6, 1995, is a substantial transfer for purposes of section 675(c)(2) of the Tax Reform Act of 1986 only if—

(i) The transfer is significant in amount; and

(ii) The transfer is connected to the entity's issuance of related debt obligations (as defined in paragraph (b)(3) of this section) that have different maturities (within the meaning of § 301.7701–1(e)).

(3) *Related debt obligation.* A related debt obligation is a debt obligation whose payments bear a relationship (within the meaning of § 301.7701–1(f)) to payments on debt obligations that the entity holds as assets.

(4) *Example.* The following example illustrates the principles of this paragraph (b):

Example. On December 31, 1991, Partnership Q holds a pool of real estate mortgages that it acquired through retail sales of single family homes. Partnership Q raises $10,000,000 on October 25, 1996, by using this pool to issue related debt obligations with multiple maturities. The transfer of the $10,000,000 to Partnership Q is a substantial transfer (within the meaning of § 301.7701(i)–3(b)(2)).

(c) *Duration of taxable mortgage pool classification*—(1) *Commencement and duration.* An entity is classified as a taxable mortgage pool on the first testing day that it meets the definition of a taxable mortgage pool. Once an entity is classified as a taxable mortgage pool, that classification continues through the day the entity retires its last related debt obligation.

(2) *Testing day defined.* A testing day is any day on or after September 6, 1995, on which an entity issues a related debt obligation (as defined in paragraph (b)(3) of this section) that is significant in amount.

§ 301.7701(i)–4 Special rules for certain entities.

(a) *States and municipalities*—(1) *In general.* Regardless of whether an entity satisfies any of the requirements of section 7701(i)(2)(A), an entity is not classified as a taxable mortgage pool if—

(i) The entity is a State, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (within the meaning of § 1.103–1(b) of this chapter), or is empowered to issue obligations on behalf of one of the foregoing;

(ii) The entity issues the debt obligations in the performance of a governmental purpose; and

(iii) The entity holds the remaining interests in all assets that support those debt obligations until the debt obligations issued by the entity are retired.

(2) *Governmental purpose.* The term governmental purpose means an essential governmental function within the meaning of section 115. A governmental purpose does not include the mere packaging of debt obligations for re-sale on the secondary market even if any profits from the sale are used in the performance of an essential governmental function.

(3) *Determinations by the Commissioner.* If an entity is not described in paragraph (a)(1) of this section, but has a similar purpose, then the Commissioner may determine that the entity is not classified as a taxable mortgage pool.

(b) *REITs.* [Reserved]

(c) *Subchapter S corporations*—(1) *In general.* An entity that is classified as a taxable mortgage pool may not elect to be an S corporation under section 1362(a) or maintain S corporation status.

(2) *Portion of an S corporation treated as a separate corporation.* An S corporation is not treated as a member of an affiliated group under section 1361(b)(2)(A) solely because a portion of the S corporation is treated as a separate corporation under section 7701(i).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: July 17, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–19285 Filed 8–4–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Revision of the Salient Factor Score

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is revising the salient factor score at 28 CFR 2.20. The salient factor score is an actuarial device which the Commission uses to measure the risk that a prisoner will violate parole. The revised Salient Factor Score will improve the accuracy of the Commission's recidivism predictions in the case of older prisoners. Under the revised score (to be known as SFS–95), the Commission will add one point to the prisoner's total score if the prisoner was 41 years of age or more at the commencement of the current offense (or parole violation), provided the prisoner does not already have the highest possible total score (10). The revision is made appropriate by the fact that the Parole Commission has jurisdiction over an aging population of prisoners and parolees whose crimes were committed prior to November 1, 1987.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase,

Maryland 20815. Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking appeared in the **Federal Register** for Tuesday, April 11, 1995 (60 FR 18378). Public comment received with regard to the proposal was generally favorable. The comment pointed out that the Commission was properly attempting to capture the results of the agency's own research on recidivism and ''burnout'' among criminal offenders. In response to a comment that suggested that the proposal was ambiguous concerning the date the current offense was ''committed'', the Commission has revised the final rule by specifying that the relevant date is the commencement of the offense. Thus, a parolee who initiates an illegal narcotics distribution conspiracy at age 39, and who continues that offense behavior after reaching 41 years of age, is not to be given the additional point required by the revised salient factor score. However, a parolee who committed his original offense at age 35, and who is returned to prison for a parole violation commenced after age 41, receives the additional point when his score is recalculated at his revocation hearing under 28 CFR 2.21(b).

The public comment also pointed out that the Commission's original research focused on age at release as opposed to the age at which the offense was committed, and suggested that the age of release should be used in the revised score. This suggestion is not practical. Using age at last release from prison would be too restrictive, and ''age at release'' on the current period of imprisonment is the result of applying the guidelines in the first instance.

Moreover, the Bureau of Prisons recently validated SFS–95 on a 1987 releasee sample (n=1205), using age at commencement of the instant offense. Using this criterion, the revised salient factor score was consistent with the original research, and displayed a high degree of predictive accuracy. (The original research was done in 1984 with research samples from 1970–72 (n=3,954) and 1978 (n=2,333).) The Mean Cost Rating in the new study increased from .54 to .56 (the highest recorded for a recidivism prediction device that has been subjected to validation) and the point biserial correlation coefficient increased from .47 to .48. Approximately 5% of the prisoners in this sample received an improved parole prognosis category placement as compared with the existing version of the salient factor score (SFS–81). The Commission expects that these results will be reflected in future parole decisionmaking.

Moreover, the revised salient factor score improves upon the existing score by giving the Commission the equivalent of a ''rate'' of criminality over a prisoner's entire career. This permits an assessment of the current momentum of the prisoner's criminal career, leading to a better prediction of the prisoner's future behavior if released on parole. For example, the Parole Commission is enabled to determine that a 50 year old defendant with 3 prior convictions and commitments over a 26-year career may be a better parole risk than a 25 year old defendant who has 2 prior convictions and commitments over a 6-year career. Both age and the rate of criminal conduct (over the length of his career) are factors that work in the older offender's favor, despite his more serious record. The Commission thus avoids the waste of taxpayer dollars that can result when imprisonment decisions fail to account for the probability that the current offense will turn out to be the last in an aging offender's lifetime.

In sum, the revised salient factor score permits the Commission to account for the affect of the aging process on each prisoner's prospects for committing further crimes after release from prison. At the present time, the average age of prisoners under the Commission's jurisdiction is 43, a reflection of the fact that the Parole Commission's jurisdiction is limited to offenders whose crimes were committed prior to November 1, 1987. (See Section 235 of the Sentencing Reform Act of 1984, which appears as an Editorial Note to 18 U.S.C. 3551.) Thus, it is increasingly appropriate for the Commission to revise the salient factor score at this time. This decision accords with the intent of Congress that the Parole Commission should ''* * * continue to refine both the criteria which are used [to judge the probability that an offender will commit a new offense] and the means for obtaining the information used therein.'' 2 U.S. Code Cong. & Admin. News at 359 (1976).

Implementation

The revised salient factor score (SFS–95) will be applied at initial parole hearings and revocation hearings held on or after October 2, 1995. It will be applied retroactively to prisoners who have already been considered for parole, or reparole, at the next scheduled statutory interim hearing under 28 CFR 2.14. If the prisoner's guideline range is reduced through application of SFS–95, the Commission will render a new parole decision. In some cases, individual factors may warrant a decision to depart upward from the reduced guideline range on the ground that the prisoner is a poorer parole risk than SFS–95 indicates. For example, certain types of organized crime members may be expected to continue their criminal careers despite advancing age. The Commission will also apply SFS–95 in any other type of hearing wherein the length of the prisoner's incarceration is a function of the prisoner's current parole prognosis. This would not be the case, for example, at a hearing under 28 CFR 2.34, wherein the length of the prisoner's incarceration is determined by the need to sanction institutional misconduct.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

The Amendment

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR part 2, § 2.20 is amended by adding a new Item G to the Salient Factor Scoring Manual, to read as follows:

§ 2.20 Paroling Policy Guidelines: Statement of general policy.

* * * * *

Salient Factor Scoring Manual

* * * * *

Item G. Older Offenders

G.1 Score 1 if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A–F is 9 or less.

G.2 Score 0 if the offender was less than 41 years of age at the commencement of the

current offense or if the total score from Items A–F is 10.

* * * * *

Special Instructions—Federal Probation Violators

Item G Use the age at commencement of the probation violation, not the original offense.

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Special Instructions—Federal Parole Violators

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Item G Use the age at commencement of the new criminal/parole violation behavior.

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Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

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Item G Use the age at commencement of the confinement/escape status violation.

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Dated: July 26, 1995.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 95–19312 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

28 CFR Part 2

Designation of a Commissioner To Act as a Hearing Examiner

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending 28 CFR § 2.59 by replacing it with a regulation which allows the Chairman of the Parole Commission to designate any Commissioner to serve as a hearing examiner. The deleted regulation concerned the authority of a Regional Commissioner to exercise the functions of a hearing examiner in the absence of a hearing examiner. Designation of a Commissioner to serve as a hearing examiner will be made with the Commissioner's consent for specified hearing dockets. A Commissioner who serves as a hearing examiner will not vote in the same proceeding as a Commissioner. This amendment replaces an obsolete rule with a regulation that permits the agency to use more of its resources to accomplish its mission.

EFFECTIVE DATE: October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: This new rule provides explicit authority in the Commission's regulations for the Parole Commission's Chairman to designate a Parole Commissioner to act as a hearing examiner and thereby assist the Commission in balancing its workload as the Commission nears the end of its existence on November 1, 1997. See 18 U.S.C. 4204(a)(3) (authorizing the Chairman to assign duties among agency staff and Commissioners so as to balance the workload and provide for orderly administration). Such designations will be made for specified hearing dockets, and only with the designated Commissioner's consent.

If a Commissioner acts as a hearing examiner in a parole proceeding, the rule provides that the Commissioner will be disqualified from voting in the case as a Commissioner during the course of the same proceeding. This includes voting on an appeal filed by the prisoner or parolee to the National Appeals Board under 28 CFR 2.26, or the full Commission under 28 CFR 2.27. This important limitation preserves the distinction in function between the hearing examiner and the Parole Commissioner in making release and revocation decisions, and ensures that appropriate checks and balances are maintained in the agency's decisionmaking.

The Commission has decided to place this regulation at 28 CFR 2.59, which has been occupied by a rule which allows a Regional Commissioner to exercise the authority of a hearing examiner only in the absence of an examiner. This regulation has been rarely used by the Commission, and the agency determined that it should be removed as obsolete.

Implementation

This rule may be utilized for any hearings scheduled on or after October 2, 1995.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, and the rule, has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.59 is revised to read as follows:

§ 2.59 Designation of a Commissioner to act as a hearing examiner.

The Chairman may designate a Commissioner, with the Commissioner's consent, to serve as a hearing examiner on specified hearing dockets. The Commissioner who serves as a hearing examiner may not vote in the same proceeding as a Commissioner.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95–19313 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

28 CFR Part 2

Parole Date Advancements for Substance Abuse Treatment Program Completion

AGENCY: Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending 28 CFR 2.60 to permit a prisoner to be considered for a special advancement of his presumptive release date, by up to twelve months, if the prisoner is a non-violent offender who has completed a treatment program for a recognized problem of substance abuse. Although 28 CFR 2.60 already sets forth a schedule of permissible advancements for superior program achievement, the Commission is adding the above-described provision in order to provide to parole-eligible prisoners an incentive to complete the treatment program that is comparable to the incentive under 18 U.S.C. 3621(e)(2) that will be available from the Bureau of Prisons for federal prisoners serving sentences for crimes committed after November 1, 1987.

DATES: *Effective Date:* October 2, 1995. Comments must be submitted by October 31, 1995.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The rationale for this amendment of the Commission's policy of rewarding superior program achievement is described in the supplementary information for the proposed rule. 60 FR 26010–11. The interim rule permits the advancement of a prisoner's presumptive release date by up to twelve months for successfully completing a residential substance abuse treatment program. This provision comports with the permissible prison term reduction identified by the Bureau of Prisons in its own interim rule on the subject. 60 FR 27695. The existing schedule of permissible reductions in paragraph (e) of § 2.60 will not limit the reward which may be granted under the interim rule for completing the residential drug abuse treatment program. Any reduction under the new policy will be in addition to any other advancement for superior program achievement in areas unrelated to participation in substance abuse treatment programs. The proposed rule included a provision that stated the Commission's intent that the normal reduction under the policy would be twelve months, with certain exceptions. The Commission decided that a precise definition of its policy should be postponed until both the Bureau of Prisons and the Commission obtain experience in the implementation of the agencies' respective rules, and therefore is publishing this rule on an interim basis, with request for further public comment. For the Parole Commission, the need is to determine whether the interim rule can be implemented consistently with the statutory criteria for parole at 18 U.S.C. 4206 (1976). If this does not appear feasible, the Commission may amend or withdraw the interim regulation.

A comment favoring adoption of the proposed rule was received from a representative of the National Association of Criminal Defense Lawyers. This comment encouraged the Commission to revise its proposal to allow the advancement of the prisoner's presumptive release date even if the prisoner had a prior history of violent offenses. The representative noted that the Commission's practice would otherwise diverge from that proposed by the Bureau of Prisons, which would be limited to the prisoner's offense of conviction as a basis for deciding whether the prisoner should be eligible for early release. The Commission did not adopt the recommended revision since the criteria it must follow in making parole decisions require it to consider the ''history and characteristics'' of the eligible prisoner and whether his release would jeopardize the public welfare. See 18 U.S.C. 4206(a)(2). The Commission must consider relevant information as to the prisoner's capacity for violence which the Bureau of Prisons may not be required to consider in granting prison term reductions under 18 U.S.C. 3621(e). In addition, the Commission notes that the Bureau has determined that it will not consider the prisoner for early release if his prior criminal record includes a conviction for homicide, forcible rape, robbery, or aggravated assault. 60 FR 27692, 27695.

Implementation

Prisoners will be considered for advancements under the interim rule at any hearing or pre-release record review that is conducted on or after October 2, 1995. The Commission will not reopen cases for prisoners who have a release date with no further hearing or review scheduled. For prisoners who are given hearings or reviews on or after October 2, 1995, the Commission may consider an advancement of the prisoner's presumptive release date under the interim rule even if completion of a residential substance abuse treatment program occurred prior to the effective date of the rule.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this interim rule is not a significant rule within the meaning of Executive Order 12866, and the rule has, accordingly, not been reviewed by the Office of Management and Budget. The rule will not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendment

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR part 2.

PART 2—[AMENDED]

(1) The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

(2) 28 CFR part 2, § 2.60 is amended by adding new paragraphs (g) and (h), to read as follows:

§ 2.60 Superior program achievement.

* * * * *

(g) Upon notification by the Bureau of Prisons that a prisoner who has a recognized problem with substance abuse, has successfully completed residential substance abuse treatment (in conformity with the criteria set forth for non-parolable prisoners in 18 U.S.C. 3621(e)), the Commission will consider such prisoner for a special advancement, by up to twelve months, of the presumptive release date previously set. Such advancement may be made even though the Schedule of Permissible Reductions in paragraph (e) of this section provides a permissible reduction of less than twelve months, and shall be in addition to any other advancement granted under this section. However, if the prisoner has already received an advancement of his presumptive parole date (or, in the case of a prisoner who has been continued to expiration, has received extra good time credit) for participation in a residential substance abuse treatment program, and the advancement (or good time credit) equals or exceeds the advancement that would be granted under this paragraph, no further advancement shall be granted.

(h) Any advancement under this section (including a special advancement for completion of residential substance abuse treatment) is subject to forfeiture, in whole or in part, whenever a presumptive parole date is rescinded pursuant to § 2.34. In the case of a special advancement under paragraph (g) of this section, the entire advancement shall be forfeited if the Commission finds that the prisoner has engaged in usage, possession, or distribution of any controlled substances subsequent to program completion.

Dated: July 27, 1995.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 95–19314 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–95–016]

RIN 2115–AE46

Special Local Regulation; We Love Erie Days Festival Fireworks Display, Lake Erie, Erie Harbor, PA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: A special local regulation is being adopted for the We Love Erie Days Festival Fireworks Display. This event will be held on Lake Erie, Erie Harbor, PA on August 20, 1995. This regulation will restrict general navigation on Erie Harbor, PA. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 9 p.m. through 11 p.m. on August 20, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Second Class Jeffrey M. Yunker, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, Room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 22, 1995, and there was not sufficient time remaining to publish a proposed final rule in advance of the event. The Coast Guard has decided to proceed with a temporary rule for this year's event and publish a NPRM, as part of the Great Lakes annual marine events list, prior to next year's event.

Drafting Information

The drafters of this notice are Lieutenant Junior Grade Byron D. Willeford, Project Officer, Ninth Coast Guard District, Aids to Navigation and Waterways Management Branch, and Lieutenant Charles D. Dahill, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The We Love Erie Days Festival Fireworks Display will be conducted on Lake Erie, Erie Harbor, PA on August 20, 1995. This regulation will restrict general navigation on Erie Harbor, PA within a 300 foot radius of the Erie Sand and Gravel Pier, the fireworks launching site. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station, Erie, PA.)

This regulation is issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of Part 100.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard is conducting an environmental analysis for this event pursuant to section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, and the Coast Guard Notice of final agency procedures and policy for categorical exclusions found at (59 FR 38654; July 29, 1995).

Economic Assessment and Certification

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

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirement, Waterways.

Temporary Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T09–016 is added to read as follows:

§ 100.35—T09–016 We Love Erie Days Festival Fireworks Display, Lake Erie, Erie Harbor, PA.

(a) *Regulated Area:* That portion of the Lake Erie, Erie Harbor, PA within a 300 ft. radius of the fireworks launching site, located on the Erie Sand and Gravel Pier, in approximate position 42°08′16″ N, 080°05′40″ W. Datum: NAD 1983.

(b) *Special Local Regulation:* This regulation restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol Commander:*

(1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Erie, PA). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective Date:* This section is effective from 9 p.m. through 11 p.m. on August 20, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY.

Dated: July 12, 1995.

G.F. Woolever,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–19347 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD05–94–118]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, to allow leaving the draw in the open position except for the passage of trains. This change to these regulations is, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CAPT R.A. Knee, Project Counsel, Fifth Coast Guard District Legal Office.

Regulatory History

On March 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, North Carolina, in the **Federal Register** (60 FR 13393). The comment period ended May 12, 1995. The Coast Guard received one comment on the Notice of Proposed Rulemaking objecting to the Coast Guard's proposed change to the regulations. The one objector stated that the proposed change at first glance sounded reasonable, but after further review, felt the city and the boating community should pay for the privilege of increased waterway accessibility just as the Albemarle and Chesapeake Railroad Company must pay for the usage of the tracks and the services of a bridgetender. The Coast Guard is without authority to assess such fees and the suggestion is inconsistent with burden placed on owners and operators of drawbridges by 33 U.S.C. 499. On April 5, 1995, the Coast Guard issued Public Notice 5–851 requesting comments on the Notice of Proposed Rulemaking. The comment period ended May 12, 1995. One comment was received on the Public Notice in favor of the Coast Guard's proposed change to the regulations. A public hearing was not requested and one was not held.

Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations governing the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, be changed to allow leaving the bridge in the open position, except when a train is passing over it and for maintenance. A bridgetender would be available only during the times of train crossings to close the bridge and, after the train had cleared or completion of any maintenance work, to reopen the bridge to navigation. There would not be a full-time bridgetender employed at the bridge.

Currently, the bridge remains in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw opens on signal. This final rule will require the bridge to be maintained in the open position except for passage of trains and, when necessary, during maintenance work. A bridgetender will be available to reopen the bridge after trains have cleared the bridge and after completion of any maintenance work.

In developing this schedule, the Coast Guard considered all views, and believes this final rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principals and criteria contained in Executive Order 12612, and it has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist have been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.833 is revised to read as follows:

§ 117.833 Pasquotank River.

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

Dated: July 12, 1995.

N.V. Scurria, Jr.,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 95–19346 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–5273–8]

Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action permanently aligns the timing of certain consequences of state air quality planning failures under EPA's transportation conformity rule with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan; and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding, the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action makes permanent the interim final rule issued on February 8, 1995 (60 FR 7449), which was effective for only six months. The lapse in conformity status which this action delays for some areas would otherwise prevent approval of new highway and transit projects.

EFFECTIVE DATE: This final rule is effective August 8, 1995.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–95–02. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668–4441.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1995, EPA issued an interim final rule entitled, ''Transportation Conformity Rule Amendments: Transition to the Control Strategy Period,'' which was effective from February 8, 1995, until August 8, 1995 (60 FR 7449). Because the interim final rule took effect without prior notice and comment, EPA limited its effectiveness to a six-month period, during which full notice and comment was to occur.

EPA also issued on February 8, 1995, a proposed rule to apply the provisions of the interim final rule permanently (60 FR 7508). The public comment period on the proposed rule lasted until March 10, 1995, and a public hearing was held on February 22, 1995.

The February 8, 1995, interim final rule delayed the conformity lapse imposed as a result of the following: an incomplete 15% rate-of-progress SIP with a ''protective finding'' (described below); a failure to submit or submission of an incomplete ozone attainment/3% rate-of-progress SIP; and a disapproval of any control strategy SIP (i.e., 15% rate-of-progress SIP, reasonable further progress SIP, or attainment demonstration) with a protective finding.

The interim final rule did not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

When the conformity status of the transportation plan and transportation improvement program (TIP) lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

EPA is delaying the conformity lapse resulting from the specific SIP deficiencies listed above because EPA has recognized that in practice, the twelve-month time period which the November 24, 1993, transportation conformity rule allowed for areas to correct those SIP deficiencies is too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

Today's final rule amends the transportation conformity rule, ''Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act'' (58 FR 62188, November 24, 1993). Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

II. Description of Final Rule

This final rule makes no substantive changes from the proposed rule. This final rule permanently applies the provisions of the February 8, 1995, interim final rule by eliminating the six-month limit to the interim final rule's

applicability. The regulatory language is somewhat modified from the interim final rule's language as a result of the elimination of the six-month limit on applicability of certain provisions.

Like the interim final rule and proposed rule, this final rule affects areas with a 15% SIP which EPA found incomplete but noted in the finding (according to 40 CFR 51.448(c)(1)(iii)) that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A) (i.e., incomplete with a ''protective finding''); ozone nonattainment areas which fail to submit an ozone attainment SIP and/or a 3% rate-of-progress SIP revision; ozone nonattainment areas with an incomplete ozone attainment SIP and/or an incomplete 3% rate-of-progress SIP; and areas with a disapproved control strategy SIP with a ''protective finding'' as described in 40 CFR 51.448 (a)(3) and (d)(3). Conformity lapse as a result of these SIP failures is delayed until Clean Air Act section 179(b) highway sanctions for these failures are applied. If the interim final rule expired on August 8, 1995, without today's final rule, conformity would lapse immediately in approximately twenty areas without complete 15% SIPs.

Like the interim final rule and proposed rule, this final rule does not change the timing of conformity lapse for disapproval of any control strategy SIP without a protective finding; for failure to submit or submission of incomplete carbon monoxide (CO), particulate matter (PM–10), or nitrogen dioxide (NO_2) attainment demonstrations; for failure to submit 15% SIPs; or for submission of incomplete 15% SIPs without protective findings.

Like the interim final rule and the proposed rule, this final rule does not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

This final rule deletes paragraphs (g)(1) and (g)(2) in 51.448(g) (93.128(g)), because these provisions are no longer relevant given the other changes of this final rule.

Today's final rule will be effective August 8, 1995. Today's final rule will prevent the conformity status of certain plans and TIPs from lapsing immediately upon expiration of the interim final rule on August 8, 1995, in approximately twenty ozone nonattainment areas currently without complete 15% SIPs. This conformity lapse would be contrary to the public interest because EPA believes that halting of transportation plan, program, and project implementation in these cases is not necessary at this time for the lawful and effective implementation of Clean Air Act section 176(c). If EPA did not make this rule effective August 8, 1995, conformity lapse which is contrary to the public interest could occur in some areas during the 30-day period between publication and the effective date which is ordinarily provided under the Administrative Procedures Act (APA), 5 U.S.C. 553(d). EPA therefore finds good cause to make this final rule effective August 8, 1995. In addition, this rule relieves a restriction and therefore qualifies for an exception from the APA's 30-day advance-notice period under 5 U.S.C. 553(d)(1).

III. Response to Comments

Fourteen comments on the proposed rule were submitted, including comments from MPOs and state and local air and transportation agencies. The majority of the comments supported the proposed rule. A complete response to comments document is in the docket.

One commenter opposed the proposed rule for a number of reasons, including the concern that the proposed rule would encourage further delays in development and submission of control strategy SIPs. EPA agrees that the submission of control strategy SIPs (and thus motor vehicle emissions budgets) is of critical importance for conformity purposes. However, EPA believes that Clean Air Act section 179(b) sanctions continue to provide appropriate incentive to submit complete and approvable control strategy SIPs.

The commenter also suggested that EPA consider options such as retaining the lapsing provisions but allowing extensions in certain circumstances, or retaining the conformity lapse but allowing a longer grace period (such as 18 or 24 months) following an EPA finding of a SIP failure. In fact, because Clean Air Act highway sanctions apply 24 months following an EPA finding of a SIP failure, today's amendments aligning conformity lapse with Clean Air Act highway sanctions implement the commenter's latter suggestion. Although the commenter was also concerned that tying conformity to sanctions would make EPA more hesitant to apply sanctions, section 179(b) sanctions are mandatory within the prescribed periods following EPA's findings of State failures, under the Clean Air Act and EPA's regulations.

Other commenters suggested that EPA should align all conformity lapses due to SIP failures with Clean Air Act sanctions. Alignment for more cases than originally proposed would require another rulemaking. EPA currently intends to issue in the future a proposal to align with Clean Air Act highway sanctions the conformity lapse which results from failure to submit a 15% SIP; an incomplete 15% SIP without a protective finding; and failure to submit or incomplete CO, PM–10, or NO_2 attainment demonstrations. This change would also dramatically decrease the complexity of the regulatory language in section 51.448 (93.128) of the conformity rule, which was a concern expressed by some commenters. EPA will be considering comments advocating alignment of the lapse which follows SIP disapprovals without protective findings, but the agency has not yet decided whether to propose amending that provision.

Some commenters suggested that every conformity lapse for any reason, including failure to demonstrate conformity to a submitted SIP, should be delayed. These suggestions are beyond the scope of the proposed rule and would also require another proposed rule. Again, EPA will be considering these comments in the context of future conformity rule amendments.

Several commenters also raised concerns about aspects of the conformity rule which are not relevant to this action, including transportation control measures and non-federal projects. These comments do not affect whether EPA should proceed with today's action, but EPA will be considering them in the context of future conformity rule amendments.

IV. Administrative Requirements

A. Administrative Designation

Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, 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 of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation affects moderate and above ozone nonattainment areas, which are almost exclusively urban areas of substantial population, and affects federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., I certify that this regulation does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Because this action will delay conformity lapses that would otherwise occur under existing regulations, EPA has determined that to the extent this rule imposes any mandate within the meaning of the Unfunded Mandates Act, this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. Therefore, EPA has not prepared a statement with respect to budgetary impacts.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone.

Dated: August 1, 1995.

Carol M. Browner,

Administrator.

40 CFR parts 51 and 93 are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

PART 93——[AMENDED]

2. The authority citation for part 93 is amended to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§§ 51.448 and 93.128 [Amended]

3. The identical texts of §§ 51.448 and 93.128 are amended as follows:

a. By redesignating paragraphs (b)(2) and (c)(2) as (b)(3) and (c)(3);

b. By removing paragraphs (g)(1) and (g)(2) and redesignating paragraph (g)(3) as (g)(1) and reserving paragraph (g)(2); and

c. By revising paragraphs (a)(3), (b)(1) introductory text, and (d)(3), and adding new paragraphs (b)(2) and (c)(2).

The identical text of additions and revisions reads as follows:

§ _____. ___ Transition from the interim period to the control strategy period.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.*

(1) For CO, PM_{10} and NO_2 areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) * * *

(ii) * * *

(2) For ozone nonattainment areas where EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision required by Clean Air Act sections 182(c)(2)(A) and/or 182(c)(2)(B), failure to submit an attainment demonstration for an intrastate moderate ozone nonattainment area that chose to use the Urban Airshed Model for such demonstration, or failure to submit an attainment demonstration for a multistate moderate ozone nonattainment area, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under section 179(b)(1) of the Clean Air Act.

* * * * *

(c) * * *

(2) In lieu of the provisions of paragraph (c)(1) of this section, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area under section

179(b)(1) of the Clean Air Act as a result of incompleteness, in ozone nonattainment areas where EPA notifies the State, MPO, and DOT that the following control strategy implementation plan revisions are incomplete:

(i) The implementation plan revision due November 15, 1994, as required by Clean Air Act sections 182(c)(2)(A), and/or 182(c)(2)(B);

(ii) The attainment demonstration required for moderate intrastate ozone nonattainment areas which chose to use the Urban Airshed Model for such demonstration and for multistate moderate ozone nonattainment areas; or

(iii) The VOC reasonable further progress demonstration due November 15, 1993, as required by Clean Air Act section 182(b)(1), if EPA notes in its incompleteness finding as described in paragraph (c)(1)(iii) of this section that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

(iv) The consequences described in paragraph (c)(1) of this section shall be nullified if such provisions have been applied as a result of a failure described in paragraph (c)(2) of this section, and paragraph (c)(2) of this section shall henceforth apply with respect to any such failure.

* * * * *

(d) * * *

(3) Notwithstanding paragraph (d)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

* * * * *

[FR Doc. 95–19400 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[FRL–5274–3]

Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements: Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: On June 22, 1995, the EPA published a proposed rule (60 FR 32477) and a direct final rule (60 FR 32466) determining that the Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, ozone nonattainment areas were attaining the National Ambient Air Quality Standard (NAAQS) for ozone. Based on that determination, the EPA also determined that requirements of section 182(b)(1) of the Clean Air Act (Act) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) of the Act concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard. The EPA is removing the final rule due to adverse comments regarding the Northern Kentucky (Cincinnati) area and will summarize and address all public comments received in a subsequent final rule (based upon the proposed rule cited above). Additionally, since publication of the original determination on June 22, 1995, the Ashland, Kentucky, and Charlotte, North Carolina, areas were redesignated to attainment on June 29, 1995 (60 FR 33748), and July 5, 1995 (60 FR 34859), respectively, making this finding for those areas no longer necessary. A final rule will be published regarding the Nashville area for which no adverse comments were received.

EFFECTIVE DATE: The direct final rule published at 60 FR 32466, June 22, 1995, is withdrawn effective August 7, 1995.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning & Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is (404) 347–3555, extension 4221.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 1995.

R.F. McGhee,

Acting Regional Administrator.

[FR Doc. 95–19487 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5274–2]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; District of Columbia

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by the District of Columbia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: September 6, 1995.

ADDRESSES: Copies of the District's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the CAA'')), and

implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

On March 21, 1995, EPA proposed interim approval of the operating permits program for the District of Columbia. (See 60 FR 14921). EPA compiled a Technical Support Document (TSD) which describes the operating permits program in greater detail. In this notice EPA is taking final action to promulgate interim approval of the operating permits program for the District of Columbia.

II. Analysis of State Submission

On January 13, 1994, the District of Columbia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR part 70. The submittal was supplemented by additional materials on March 11, 1994 and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). EPA reviewed the program against the criteria for approval in section 502 of the CAA and the part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the District's operating permits program (see 60 FR 14921 (March 21, 1995)) and the TSD for this action, that the District's operating permits program substantially meets the requirements of the CAA and part 70.

III. Response to Public Comments

EPA received comments from one organization. EPA's response to these comments are summarized in this section. Comments supporting EPA's proposal are not addressed in this notice. All comments are contained in the docket at the address noted in the **ADDRESSES** section above.

Title I Modifications

Comment: EPA has no authority to deny approval of the District's operating permits program based on its definition of ''Title I modification or modification under any provision of Title I of the Act''. The District's definition of the term ''Title I Modification'' which does not expressly include changes reviewed under a minor source preconstruction review program is consistent with the relatively narrow definition of ''Title I Modifications'' in the current part 70 rules.

EPA Response: As stated in the proposed rule, EPA does not believe that the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' is necessary grounds for either interim approval or disapproval. Accordingly, EPA has not identified the District's definition of this term to be a program deficiency.

EPA is currently in the process of determining the proper definition of the term ''Title I modification or modification under any provision of Title I of the Act''. (See 59 FR 44572). If EPA establishes in its rulemaking that the definition of ''Title I modifications'' can be interpreted to exclude changes reviewed under a minor source preconstruction review (NSR) program, the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' would be fully consistent with part 70. Conversely, if EPA establishes through the rulemaking that the definition must include changes reviewed under minor NSR, the District's definition of ''Title I modification or modification under any provision of Title I of the Act'' would not fully meet the 40 CFR 70.2 requirements for definitions.

The primary purpose of EPA's discussion of this issue in the proposed rule was to notify the District and regulated community about how the definition of ''Title I modification or modification under any provision of Title I of the Act'' may impact the approval status of the District's Title V operating permits program. Until the definition of ''Title I modification or modification under any provision of Title I of the Act'' is established through rulemaking to include changes reviewed under minor NSR, EPA does not consider the District's definition of this term to be either an interim or disapproval issue.

Implementation of Section 112(g) Upon Program Approval

Comment: EPA's proposed approval of the District's Chapter 3 operating permits program for the purpose of implementing 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of section 112(g) regulations is objectionable for the following reasons: (1) the District's program may not conform to the section 112(g) requirements once they have been issued by EPA, and (2) EPA is proposing to approve the program without clarifying whether the District's program addresses the critical threshold questions of how a source is to determine if an emissions increase is or is not greater than *de minimis,* and whether or not it has been offset satisfactorily. EPA has no legal basis for allowing the District to implement section 112(g) until the agency completes its rulemaking under 112(g).

EPA Response: Title V of the CAA and the part 70 regulations require states seeking to obtain and retain approval of Title V operating permit programs to have authority to issue permits and assure compliance with all applicable requirements. (Section 502(b)(5)(A) and 40 CFR 70.4(b)(3)(i)). Section 112(g)(2) of the CAA, an applicable requirement, provides that no person may modify, construct or reconstruct a major source of HAP, unless the Administrator (or the state) determines that maximum achievable control technology (MACT) limitations have been met or that sufficient offsets have been provided. Accordingly, as discussed in the preamble to the proposed section 112(g) rule, EPA interprets the statute to require states to implement section 112(g) including the development of case-by-case MACT determinations, in order to obtain and retain approval of Title V operating permits programs (See 59 FR 15565).

In the proposed interim approval of the District's operating permits program, EPA proposed to approve the District's Chapter 3 operating permits program for the purpose of implementing section 112(g) during the transition period between federal promulgation of a section 112(g) rule and District adoption of 112(g) implementing regulations. (See 60 FR 14925–6). This proposal was based in part on EPA's revised interpretation of the CAA discussed in a **Federal Register** notice published on February 14, 1995 which postponed the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. (See 60 FR 8333).

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule

so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption by the District of implementing regulations.

As described in the proposed rule, EPA believes that, although the District currently lacks a program designed specifically to implement section 112(g), the District's Chapter 3 operating permits program will serve as an adequate implementation vehicle during a transition period because it will allow the District to select control measures that would meet MACT, as defined in section 112, and incorporate these measures into federally enforceable source-specific permits for major sources of hazardous air pollutants (HAP).

A consequence of the fact that the District lacks a program designed specifically to implement section 112(g) is that the timing requirements for submitting permit applications to establish case-by-case MACT determinations will differ from those in the section 112(g) rule. However, EPA expects the District to be able to require sources to submit applications to obtain operating permits or permit revisions to establish case-by-case MACT determinations prior to construction where necessary for purposes of section 112(g) even if its own operating permits program does not require such permit applications to be submitted until twelve (12) months after commencing operations.

Although the Chapter 3 operating permits program does not at this time address critical 112(g) threshold questions with respect to *de minimis* levels and offsets, EPA believes that the District can adequately implement 112(g) prior to adoption of EPA's final promulgated 112(g) rule by relying on the authority established in the Chapter 3 operating permits program and using EPA's final 112(g) rule as guidance. Pursuant to the District's commitment ''to adopt and implement expeditiously any additional regulations that might be needed to incorporate such [future section 112] requirements into operating permits'', the District will be expected to establish additional authorities with respect to 112(g) *de minimis* levels and/or offsets, if necessary, consistent with the 112(g) rule once EPA promulgates a rule addressing those provisions.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by the District of Columbia on January 13, 1994, and supplemented on March 11, 1994. The District must make the changes identified in the proposed rule in order to fully meet the requirements of the July 21, 1992 version of part 70. (See 60 FR 14926). The District must also have acid rain regulations and adequate forms in place by November 15, 1995 consistent with the commitment made in a February 3, 1995 letter to EPA.

The scope of the District's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the District of Columbia, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until September 8, 1997. During this interim approval period, the District is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in the District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If the District fails to submit a complete corrective program for full approval by March 7, 1997, EPA will start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that the District had come into compliance. In any case, if, six months after application of the first sanction, the District still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the District's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of the District, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In all cases, if, six months after EPA applies the first sanction, the District has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if the District has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for the District of Columbia upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the District's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

Additionally, EPA is promulgating approval of Chapter 3 of Subtitle I of Title 20 of the District of Columbia Municipal Regulations (20 DCMR),

under the authority of Title V and Part 70 for the purpose of implementing section 112(g) to the extent necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of any necessary District rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of the Chapter 3 operating permits program for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. The duration of this approval is limited to 18 months following promulgation by EPA of section 112(g) regulations, to provide the District with adequate time to adopt regulations consistent with federal requirements.

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

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this proposed interim approval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

EPA has determined that this final interim approval action, promulgating interim approval of the District of Columbia's operating permits program, does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: July 20, 1995.

W.T. Wisniewski,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Appendix A to part 70 is amended by adding the entry for the District of Columbia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

District of Columbia

(a) Environmental Regulation Administration: submitted on January 13, 1994 and March 11, 1994; interim approval effective on September 6, 1995; interim approval expires September 8, 1997.

(b) [Reserved]

* * * * *

[FR Doc. 95–19399 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 258

[EPA/OSW–FR–95; FRL–5271–8]

Financial Assurance Criteria for Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: This rule corrects typographical errors in the Financial Assurance Criteria (40 CFR part 258, subpart G) for owners and operators of municipal solid waste landfills (MSWLFs).

EFFECTIVE DATE: These technical corrections are effective August 7, 1995. The effective date for subpart G of 40 CFR part 258 was recently extended from April 9, 1995 until April 9, 1997 (see the April 7, 1995 **Federal Register**, 60 FR 17649).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this document, contact Allen J. Geswein (703–308–7261), Office of Solid Waste (5306W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This rule corrects typographical errors included in the Financial Assurance Criteria issued on October 9, 1991 as part of the Criteria for Municipal Solid Waste Landfills (see 56 FR 50978). The cross-references in the provisions that relate to a trust fund (§ 258.74(a) (3) and (4)), a letter of credit (§ 258.74(c)(3)) and an insurance policy (§ 258.74(d)(3)) are being changed to reference the correct section that provides for the use of multiple financial mechanisms (''§ 258.74(k)'' or ''paragraph k'') instead of the current (incorrect) reference to the section that addresses a state's assumption of responsibility for compliance with financial assurance requirements (''§ 258.74(j)'' or ''paragraph j''); the surety bond provisions at § 258.74(b)(2) already correctly reference § 258.74(k). Another change eliminates an incorrect reference to § 270.74(a) in the trust fund provisions at § 258.74(a)(6) and substitutes the correct reference to § 258.74(a). A final change corrects a grammatical error in the trust fund provisions at § 258.74(a)(4) by substituting ''in the pay-in period'' for ''on the pay-in period'' in the last sentence of that subsection.

There is good cause pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to issue today's technical corrections without prior notice and comment, because notice and comment is unnecessary when, as in this case, the changes only correct prior typographical errors and do not materially change the regulatory requirements.

List of Subjects in 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: June 20, 1995.

Elliott Laws,

Assistant Administrator for Solid Waste and Emergency Response.

40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority section for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c); 33 U.S.C. 1345 (d) and (e).

2. Section 258.74 is amended by revising paragraphs (a)(3), (a)(4), (a)(6), (c)(3), and (d)(3) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (k) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [CE − CV]/Y

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (k) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

Next Payment = [RB − CV]/Y

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

* * * * *

(6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and paragraph (a) of this section, as applicable.

* * * * *

(c) * * *

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in paragraph (k) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.

* * * * *

(d) * * *

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in paragraph (k) of this section. The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

* * * * *

[FR Doc. 95–19251 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–121; RM–8220]

Radio Broadcasting Services; Buena Vista, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281C3 for Channel 281A at Buena Vista, Colorado, and modifies the Class A authorization for Station KBVC(FM) to specify operation on the higher powered channel, as requested by Riley M. Murphy. *See* 58 FR 31183, June 1, 1993. Coordinates used for Channel 281C3 at Buena Vista are 38–39–49 and 106–12–50. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–121, adopted July 27, 1995, and released August 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by removing Channel 281A and adding Channel 281C3 at Buena Vista.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 95–19362 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Chapter 2

Defense Federal Acquisition Regulation Supplement (DFARS); Revision of Authority Citation

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is revising the authority citations for 48 CFR Chapter 2 to update the authority for issuance of the Defense FAR Supplement. In addition, the DAR Council is adding the new authority citation to Appendix G as an authority citation was previously inadvertently omitted.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lucile Martin, (703) 602–0131.

List of Subjects for 48 CFR Chapter 2

Goverment procurement.

Accordingly, under the authority of 41 U.S.C. 421 et seq., the Defense FAR Supplement authority citation for 48 CFR Parts 201 through 253 and Appendices A through I of Chapter 2 is revised and a new authority citation for Appendix G is added to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 95–19315 Filed 8–14–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Parts 206, 207, 215, 219, and 252

[DFARS Case 95–D701]

Defense Federal Acquisition Regulation Supplement; Contract Award (Interim)

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (''the Act''). The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement concerning acquisition planning, contracting by negotiation, and competition requirements as a result of changes to Title 10 U.S.C. by Sections 1506, 3065, 3066, and 7101(b) of the Act.

DATES: *Effective Date:* August 7, 1995.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 6, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR),IMD 3D139,3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D701 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Mellissa D. Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please Cite DFARS case 95–D701.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (''the Act''), dated October 13, 1994, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

DFARS Case 95–D701 addresses six defense-unique sections of the Act that were given immediate effectivity by Section 10001(c) of the Act: Section 1506, Repeal of Requirement Relating to Production Special Tooling and Production Special Test Equipment; Section 1507, Regulations for Bids; Section 3063, DoD Acquisition of Intellectual Property Rights; Section 3065, Codification and Revision of Limitation on Lease of Vessels, Aircraft, and Vehicles; Section 3066, Soft Drink Supplies; and Section 7101(b), Repeal of Certain Requirements. Following is a discussion of the changes associated with each section:

Section 1506, Repeal of Requirement Relating to Production Special Tooling and Production Special Test Equipment—This section repeals 10 U.S.C. 2329, which contained requirements relating to production special tooling and production special test equipment. The requirements of 10 U.S.C. 2329 had been implemented at DFARS 215.871 and was the sole reason that section was created. The interim rule removes and reserves DFARS 215.871.

Section 1507, Regulations for Bids—This section amends 10 U.S.C. 2381(a) to vest the Secretary of Defense with the authority to prescribe regulations covering the preparation, submission, and opening of bids. Existing FAR coverage at Subpart 1.3 already vests the Secretary of Defense with this authority, especially when one considers that 5 U.S.C. allows agency heads, such as the Secretary of Defense, to structure the internal administrative procedures of his/her agency to support, among other things, the procurement process. Therefore, DFARS was not amended to implement this Section of the Act.

Section 3063, DoD Acquisition of Intellectual Property Rights—This section of the Act rewords the listing of the types of copyrights, designs, patents, processes, etc., in which DoD may obtain rights in data, to include technical data and computer software and releases of past infringements or unauthorized use of technical data and computer software. Since the existing guidance at DFARS Part 227 already covers these types of situations, no change has been made to DFARS.

Section 3065, Codification and Revision of Limitation on Lease of Vessels, Aircraft, and Vehicles—This section of the Act adds a new section at 10 U.S.C. 2401a, which requires DoD to consider all costs and make a written determination prior to entering into any contract with a term of 18 months or more, or extending or renewing any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement. A new section is added at DFARS 207.470 to implement this section of the Act.

Section 3066, Soft Drink Supplies—This section of the Act amends 10 U.S.C. 2424, which authorizes noncompetitive procurement of supplies and services from exchange stores outside the United States, to make the limitations of 10 U.S.C. 2424(b) (1) and (2) inapplicable to the purchase of U.S. manufactured soft drinks. Those limitations (i.e., contract dollar value not to exceed $50,000 and the requirement that supplies be on hand at the exchange store on the contract award date) created purchasing problems for the Defense Personnel Support Center (DPSC), the DLA activity currently responsible for commissary supplies of soft drinks. This interim rule amends the DFARS at 206.302–5(b), to specify that U.S. manufactured soft drinks are not subject to the limitation of 10 U.S.C. 2424(b) (1) and (2).

Section 7101(b), Repeal of Certain Requirements—This section repeals Section 804 of Public Law 102–484, Certificate of Competency Requirements. This statute was implemented at DFARS 219.602–1(a), 219.602–70, and 252.219–7009. As the statutory requirement has been deleted, the interim rule deletes these DFARS sections.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because: the amendment at DFARS 206.302–5 pertains only to purchases made outside the United States for use by armed forces outside the United States; the amendment at DFARS Supbart 207.4 pertains to internal Government considerations regarding

leasing; the section deleted at DFARS 215.871 applied only to production contracts where special tooling/special test equipment costs exceeded $1,000,000; and the language deleted at DFARS 219.602 and 252.219–7009 pertained only to administrative procedures for processing a request for a certificate of competency. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D701 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule will not impose any additional reporting or record keeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to implement Sections 1506, 3065, 3066, and 7101(b) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), which became effective on October 13, 1995. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 206, 207, 215, 219, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 206, 207, 215, 219, and 252 are amended as follows:

PART 206—COMPETITION REQUIREMENTS

1. The authority citation for 48 CFR Parts 206, 207, 215, 219, and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 206.302–5 is amended by revising paragraph (b)(i) to read as follows:

206.302–5 Authorized or required by statute.

(b) * * *

(i) Acquire supplies and services from military exchange stores outside the United States for use by the armed forces outside the United States in accordance with 10 U.S.C. 2424(a) and subject to the limitations of 10 U.S.C. 2424(b). The limitations of 10 U.S.C. 2424(b) (1) and (2) do not apply to the purchase of soft drinks that are manufactured in the United States. For the purposes of 10 U.S.C. 2424, soft drinks manufactured in the United States are brand name carbonated sodas, manufactured in the United States, as evidenced by product markings.

* * * * *

PART 207—ACQUISITION PLANNING

3. Section 207.470 is added to read as follows:

207.470 Statutory requirement.

As required by 10 U.S.C. 2401a, the contracting officer shall not enter into any contract for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement with a term of 18 months or more, or extend or renew any such contract for a term of 18 months or more, unless the head of the contracting activity has—

(a) Considered all costs of such a contract (including estimated termination liability); and

(b) Determined in writing that the contract is in the best interest of the Government.

PART 215—CONTRACTING BY NEGOTIATION

215.871 [Removed and reserved]

4. Section 215.871 is removed and reserved.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.602–1 [Amended]

5. Section 219.602–1 is amended by removing paragraph (a).

219.602–70 [Amended]

6. Section 219.602–70 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7009 [Removed]

7. Section 252.219–7009 is removed.

[FR Doc. 95–19317 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 235

Defense Federal Acquisition Regulation Supplement; Federally Funded Research and Development Centers

AGENCY: Department of Defense (DoD).

ACTION: Correction to interim regulation.

SUMMARY: The Department of Defense published miscellaneous amendments (DAC 91–7) to acquisition regulations on June 5, 1995, (60 FR 29491). Coverage concerning Federally funded research and development centers that was added as an interim rule published on March 10, 1995 was inadvertently added again on June 5, 1995. This correction removes the duplicate coverage.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Lucile Martin at (703) 602–0131.

SUPPLEMENTARY INFORMATION: The Director of Defense Procurement issued an interim rule adding coverage at 235.017–1 on March 10, 1995 at 60 FR 13076. The same addition was inadvertently included in the miscellaneous amendments (DAC 91–7) published on June 5, 1995 at 60 FR 29491 and should be withdrawn.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

The following correction is made to the rule published on June 5, 1995:

1. At page 29500, in the second column, amendatory instruction No. 42 is removed.

[FR Doc. 95–19316 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[APD 2800.12A, CHGE 64]

RIN 3090–AF78

General Services Administration Acquisition Regulation; Contracting Officer Warrant Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise section 501.601 and to remove sections 501.602–1, 501.603, 501.603–1, 501.603–3, 501.603–4, and 501.603–70. The material contained in these sections

dealing with the selection, appointment, and termination of contracting officers has been determined to be non-regulatory material and is being relocated to an internal GSA directive. In addition, GSA Forms 3409 and 3410 have been removed from the GSAR and relocated to an internal directive.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Teresa Elbin, Office of GSA Acquisition Policy, (202) 501–4765.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it is not a significant revision as defined in FAR 1.501–1.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget for review because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1.

D. Paperwork Reduction Act

This rule does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501, et seq. Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Part 501

Government procurement.

Accordingly, 48 CFR Part 501 is amended as follows:

1. The authority citation for 48 CFR Part 501 continues to read as follows:

Authority: 40 U.S.C. 486(c).

Subpart 501.6—Contracting Authority and Responsibilities

2. Section 501.601 is revised to read as follows:

501.601 General.

Heads of contracting activities (see 502.1) are contracting officers by virtue of their position. Other contracting officers are appointed under FAR 1.603 and GSA's contracting officer warrant program.

501.602–1, 501.603, 501.603–3, 501.603–4, 501.603–70 [Removed]

3. Sections 501.602–1, 501.603, 501.603–3, 501.603–4, and 501.603–70 are removed.

Dated: July 31, 1995.

C. Allen Olson,

Acting Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–19223 Filed 8–4–95; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 1816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870

[Justice Acquisition Circular 95–2]

Amendments to the Justice Acquisition Regulations (JAR) Regarding: Department of Justice (DOJ) Acquisition Regulation System, Administrative Matters, Publicizing Contract Actions, Contract Delivery or Performance, Contracting by Negotiation and Types of Contracts

AGENCY: Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the JAR by revising policies and procedures regarding: the Department's acquisition regulation system; administrative matters; publicizing contract actions; contract deliveries and performance; contracting by negotiation; and, types of contracts in response to a review of existing procurement regulations by the DOJ's Procurement Employee Innovation Team.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Janis Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

List of Subjects in 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870

Government procurement.

Dated: July 19, 1995.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority citation for 48 CFR Parts 2801, 2802, 2804, 2805, 2807, 2808, 2809, 2810, 2812, 2813, 2814, 2815, 2816, 2817, 2828, 2829, 2830, 2832, 2833, 2835, 2845, 2852 and 2870 continues to read as follows:

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2801.000 [Removed]

2. Section 2801.000 is removed.

Subpart 2801.2—Administration

2801.270–2 [Removed]

3. Section 2801.270–2 is removed.

4. Section 2801.270–4 is revised to read as follows:

2801.270–4 Numbering.

Justice Acquisition Circulars will be consecutively numbered beginning with the number 1, after each rewrite and publication of the Justice Acquisition Regulations.

Subpart 2801.3—Agency Acquisition Regulations

5. Section 2801.304 is amended by revising paragraph (b) to read as follows:

2801.304 Agency control and compliance procedures.

* * * * *

(b) The Procurement Executive will review all bureau unpublished internal acquisition policies and provide comments prior to their implementation.

Subpart 2801.4—Deviations From the Federal Acquisition Regulation and the Justice Acquisition Regulations

6. Section 2801.403 is revised as follows:

2801.403 Individual deviations.

Individual deviations from the FAR or the JAR shall be approved by the head of the contracting activity (HCA). A

copy of the deviation shall be included in the contract file. Copies of all deviations will be provided to the Procurement Executive.

7-8. Section 2801.470 is revised as follows:

2801.470 Requests for class deviations.

Requests for approval of class deviations to the FAR of the JAR shall be forwarded to the Procurement Executive. Such requests will be signed by the bureau procurement chief. Requests for class deviations shall be submitted as far in advance as the exigencies of the situation permit and shall contain sufficient written justification to evaluate the request.

Subpart 2801.6—Contracting Authority and Responsibilities

9. Section 2801.602–3 is revised as follows:

2801.602–3 Ratification of unauthorized commitments.

The HCA may delegate the authority to ratify unauthorized commitments to the chief of the contracting office, except for those actions effected by his or her office. Dollar thresholds for delegations made under this section will be determined by the HCA. Copies of all ratifications are to be provided to the Procurement Executive.

§ 2801.602–70 [Amended]

10. Section 2801.602–70 is amended by removing paragraph (f).

Subpart 2801.7—Contracting Officer's Technical Representative (COTR's)

11. Section 2801.7001–702 is amended by revising paragraphs (d)(1) and (g) as follows:

2801.7001–702 Selection, appointment, limitation of authority.

* * * * *

(d) *Certification and appointment.* (1) In accordance with bureau procedures, the individual must provide the contracting activity with evidence of completion of the COTR course, procurement ethics training, and with the certification required by the Procurement Integrity Act. Upon determination that the required standards have been met, the chief of the contracting office will issue a one-time Certificate of COTR Appointment.

* * * * *

(g) *Implementation schedule and waivers.* No individual may serve as a COTR on any contract without the requisite training and signed COTR certificate for the file. In the rare event that there is an urgent requirement for a specific individual to serve as a COTR and the individual has not successfully completed the required training, the bureau procurement chief may waive the training requirements and authorize the individual to perform the COTR duties, for a period of time not to exceed 120 days. The waiver may be granted in accordance with bureau procedures.

PART 2802—DEFINITIONS OF WORDS AND TERMS

2802.000 [Removed]

12. Section 2802.000 is removed.

Subpart 2802.1—Definitions

13. Section 2802.102 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), adding a new paragraph (f) and revising the redesignated paragraph (g), as follows:

2802.102 Definitions

* * * * *

(f) *Bureau procurement chief* means that supervisory official who is directly responsible for supervising, managing and directing all contracting offices of the bureau.

(g) *Chief of the contracting office* means that supervisory official who is directly responsible for supervising, managing and directing the contracting office.

* * * * *

PART 2804—ADMINISTRATIVE MATTERS

2804.000 [Removed]

14. Section 2804.000 is removed.

Subpart 2804.8—Contract Files [Removed]

15. Subpart 2804.8 is removed.

Subpart 2804.9—Information Reporting to the Internal Revenue Service

2804.900 [Removed]

16. Section 2804.900 is removed.

Subpart 2804.70—Procurement Requisitions [Removed]

17. Subpart 2804.70 is removed.

PART 2805—PUBLICIZING CONTRACT ACTIONS

Subpart 2805.1—Dissemination of Information [Removed]

18. Subpart 2805.1 is removed.

Subpart 2805.5—Paid Advertisements

19. Section 2805.502 is amended by revising paragraph (a) as follows:

2805.502 Authority.

(a) Authorization for paid advertising is required for newspapers only. Pursuant to 28 CFR 0.140, the authority to approve publication of paid advertisements in newspapers has been delegated to the officials listed in 2801.601(a). This authority may be redelegated as appropriate.

* * * * *

PART 2807—ACQUISITION PLANNING

Subpart 2807.70—End-of-Year Procurements

2807.700 [Removed]

20. Section 2807.700 is removed.

PART 2808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2808.000 [Removed]

21. Section 2808.000 is removed.

Subpart 2808.1—Excess Personal Property [Removed]

22. Subpart 2808.1 is removed.

PART 2809—CONTRACTOR QUALIFICATIONS

Subpart 2809.4—Debarment, Suspension and Ineligibility

2809.400 [Removed]

23. Section 2809.400 is removed.

2809.403 [Removed]

24. Section 2809.403 is removed.

2809.405–2 [Removed]

25. Section 2809.405–2 is removed.

2809.471 [Removed]

26. Section 2809.471 is removed.

PART 2810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2810.000 [Removed]

27. Section 2810.000 is removed.

PART 2812—CONTRACT DELIVERY OR PERFORMANCE

2812.000 [Removed]

28. Section 2812.000 is removed.

Subpart 2812.1—Extension of Delivery or Performance Schedules

29. Section 2812.170 is revised as follows:

2812.170 Policy.

It is the policy of DOJ to ensure that contract delivery schedules are reasonable, realistic and meet the requirements of the acquisition. However, in some instances when the contractor fails to deliver in a timely manner, it may be necessary for the

Government to allow the contractor to continue performance. Under these circumstances, if the delay is caused by conditions which would not be considered ''excusable delays'' (as defined in FAR clause 52.249–14, Excusable Delays) the contracting officer should secure consideration for the Government's forbearance in extending the delivery schedule.

PART 2813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 2813.5—Purchase Orders

2813.570 [Removed]

30. Section 2813.570 is removed.

Subpart 2813.70—Certified Invoice Procedure

31. Section 2813.7002 is amended by revising paragraph (c) as follows:

2813.7002 Procedure.

* * * * *

(c) The Chief of the Contracting Office, as defined in (JAR) 48 CFR 2802.102(g), shall delegate the authority to the use the certified invoice procedure. Each delegation must specify any limitation placed on the individual's use of these procedures, such as limits on the amount of each purchase, or limits on the commodities, or services which can be procured.

* * * * *

PART 2814—SEALED BIDDING

2814.000 [Removed]

32. Section 2814.000 is removed.

Subpart 2814.4—Opening of Bids and Award of Contract

2814.401 [Removed]

33. Section 2814.401 is removed.

2814.402 [Removed]

34. Section 2814.402 is removed.

PART 2815—CONTRACTING BY NEGOTIATION

Subpart 2815.4—Solicitation and Receipt of Proposals and Quotations

35. Section 2815.405 is revised as follows:

2815.405 Solicitations for informational and planning purposes.

When a solicitation for informational or planning purposes is to be issued, the contracting officer shall make a written determination that such solicitation is justified. This determination shall be approved at one level above the contracting officer.

Subpart 2815.8—Price Negotiation

36. Section 2815.804–370 is revised as follows:

2815.804–370 Waiver of submission of certified cost or pricing data.

In exceptional cases, the requirement for submission of certified cost or pricing data may be waived. The authorization to waive the requirement shall be in writing and shall set forth the relevant circumstances, including the reasons for granting the waiver and the contracting officer's recommendation. The waiver shall be approved by the appropriate bureau official listed in 2801.601(a) or his/her designee in accordance with bureau procedures.

PART 2816—TYPES OF CONTRACTS

2816.000 [Removed]

37. Section 2816.000 is removed.

Subpart 2816.6—Time-and-Materials, Labor-Hour, and Letter Contracts

38. Section 2816.601 is added to read as follows:

2816.601 Time-and-materials contracts.

A time-and-materials type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a time-and-materials type contract will be made at a level above the contracting officer.

39. Section 2816.602 is added to read as follows:

2816.602 Labor-hour contracts.

A labor-hour type contract may be used only after the contracting officer receives written approval from the chief of the contracting office. When the contracting officer is also the chief of the contracting office, the approval to use a labor-hour type contract will be made at a level above the contracting officer.

40. Section 2816.603–370 is added to read as follows:

2816.603–370 Limitations.

Copies of all approved determinations authorizing the use of letter contracts shall be provided to the Procurement Executive.

PART 2817—SPECIAL CONTRACTING METHODS

Subpart 2817.2—Options [Removed]

41. Subpart 2817.2 is removed.

PART 2828—BONDS AND INSURANCE

Subpart 2828.1—Bonds

2828.105 [Removed]

42. Section 2828.105 is removed.

PART 2829—TAXES

2829.000 [Removed]

43. Section 2829.000 is removed.

PART 2830—COST ACCOUNTING STANDARDS

Subpart 2830.2—CAS Program Requirements

44. Section 2830.201–270 is revised as follows:

2830.201–270 Impracticality of submission.

When the contracting officer has determined that it is impractical to secure a Disclosure Statement, as required by FAR 30.202, he/she will document the reasons and rationale for such impracticality and forward the determination, and an explanatory cover letter which sets forth the pertinent circumstances and details the solicitation contracting officer's attempts to secure the Disclosure Statement, to the Procurement Executive for review of the documentation prior to forwarding it to the AAG/A for approval.

PART 2832—CONTRACT FINANCING

2832.000 [Removed]

45. Section 2832.000 is removed.

Subpart 2832.4—Advance Payments

2832.400 [Removed]

46. Section 2832.400 is removed.

Subpart 2832.70—Prompt Payment

2832.7000 [Removed]

47. Section 2832.7000 is removed.

PART 2833—PROTESTS, DISPUTES AND APPEALS

2833.000 [Removed]

48. Section 2833.000 is removed.

PART 2835—RESEARCH AND DEVELOPMENT CONTRACTING

2835.000 [Removed]

49. Section 2835.000 is removed.

PART 2845—GOVERNMENT PROPERTY

2845.000 [Removed]

50. Section 2845.000 is removed.

PART 2852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2852.000 [Removed]

51. Section 2852.000 is removed.

Subpart 2852.1—Instructions for Using Provisions and Clauses

2852.100 [Removed]

52. Section 2852.100 is removed.

Subpart 2852.2—Texts and Provisions of Clauses

2852.200 [Removed]

53. Section 2852.200 is removed.

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

2870.000 [Removed]

54. Section 2870.000 is removed.

[FR Doc. 95–19042 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 800, 830, and 831

Reporting of Public Aircraft Accidents

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: Following review of the comments received, the NTSB is adopting revisions to its rules to implement Public Law 103–411, which expands the scope of its jurisdiction to include investigations of certain public aircraft accidents.

DATES: The rules are effective September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: On October 25, 1994, President Clinton signed H.R. 2440, the Independent Safety Board Act Amendments of 1994. Codified as Public Law 103–411 (the Act), it was effective on April 23, 1995, and directly affects aircraft operated by and for Federal, State and local governments. In addition to expanding the Federal Aviation Administration's (FAA) safety regulation to previously exempt ''public'' aircraft, the Act expanded the jurisdiction of the National Transportation Safety Board (NTSB or Safety Board) to encompass the investigation of all public aircraft other than those operated by the Armed Forces or by a United States intelligence agency.

By notice of proposed rulemaking (NPR) published in the **Federal Register** March 15, 1995 (60 FR 13948), we proposed and sought comment on rules to implement this new authority. We received 14 comments.[1] The States welcome the Board's investigation, in the unfortunate event that a State aircraft is involved in an accident, and either support or have no comment on the proposed rules themselves. ALPA favors this expansion of the Board's authority, but urges that funding levels be adequate for the Board to continue to investigate thoroughly public and civil aircraft accidents.

The Forest Service and Helicopter Association International are concerned that the exception for aircraft operated by the Armed Forces and U.S. intelligence agency aircraft not be read too broadly. The Forest Service's letter notes:

> The Forest Service supplements its aerial firefighting resources during times of extreme fire activity with aircraft and flight crews from the Armed Forces. These resources are furnished to us by active military, Reserve, and National Guard units. The Forest Service pays the Armed Forces an hourly rate for this service, has operational control over their movement, and uses them for the same missions as civil and other public aircraft which includes the transportation of passengers. In the case of Reserve and National Guard units, the flight crews are often pilots that normally fly commercial aircraft, including airliners, and fly the Armed Forces aircraft on a part-time basis.

The Forest Service considers these flights to be under its auspices and control and therefore ''public'' for investigation purposes. It objects to the proposal in the NPR to define ''operated by the Armed Forces'' only with reference to the actual, physical manipulation of the controls. The Forest Service requests that we reconsider this approach and interpret the Armed Forces exception narrowly and exclude aircraft from Reserve and National Guard units that are under the operational control of non-defense agencies (that is, to define control not in a physical sense but in a sense of directing the use to which the aircraft is put).

Mr. Kuchta argues that the Armed Forces/intelligence agency exception, as we have proposed to interpret it, is too narrow. He cites the Federal Aviation Act's definition of ''operation of aircraft,''

> ''operate aircraft'' and ''operation of aircraft'' mean using aircraft for the purposes of air navigation, including—
>
> (A) the navigation of aircraft; and
>
> (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.[2]

Thus, the definition includes both types of control we have discussed. Mr. Kuchta also notes that, in its adjudication of FAA-instituted certificate actions (the so-called enforcement docket), the Board interprets the term ''operation'' expansively to include other than actual physical manipulation of the controls.

The comments of the parties should demonstrate, and have convinced us, that defining our jurisdiction with regard to the exception is not as straightforward as we had hoped. At the same time, however, FA Act definitions, while they may inform the process, do not control the interpretation of language in our enabling statute, nor does Board precedent from other contexts. The critical consideration is to ensure that the exception is not so broad as to unduly limit our investigatory role, and not so narrow as to intrude improperly in military concerns that have little or no implication for civilian air safety.

On review of the comments, we will revise our future approach. We will consider both the physical manipulation of the controls and the broader operational control concept in determining whether an aircraft is operated by the Armed Forces or an intelligence agency so as to remove it from our investigatory responsibility. Using this approach, we would find, for example, that a cloud-seeding flight using a National Guard pilot and aircraft, but arranged and contracted for by the Forest Service, is not a flight ''operated by'' the Armed Forces. Indeed, such a flight, because cloud seeding is also conducted by civilian aircraft, has implications for civilian aircraft safety and, therefore, prompts exercise of our statutory role to promote air safety. On the other hand, investigations of accidents involving combat aircraft, combat maneuvers, or military surveillance or air navigational control are clearly on the other side of the equation and we believe that it is examples such as these that prompted Congress' exception.

There may be instances where analysis under the standards of (A) and (B) above produces opposite conclusions. For example, if the Army

[1] We received comments from 10 States (Alaska, Connecticut, Hawaii, Iowa, Maine, Maryland, Mississippi, Montana, Pennsylvania, and Wisconsin), three associations (the Air Line Pilots Association (ALPA), the Helicopter Association International, and the National Business Aircraft Association, Inc.), one government agency (the Department of Agriculture, Forest Service), and one individual (Joseph D. Kuchta).

[2] 49 U.S.C. 40102(a)(32), as recodified.

uses a civilian aircraft and crew to transport troops, application of (A) would produce a conclusion that the aircraft was a civil aircraft, not ''operated by'' the Armed Forces, but consideration under (B) would lead to the conclusion that, because the Army ''caused'' the operation, it involved aircraft operated by the Armed Forces and not subject to our investigation jurisdiction. Again, we would resolve the question by analyzing the circumstances with special reference to our statutory responsibility: With a civilian aircraft and crew, there are such implications for civilian air safety that the exception should not apply. This result is consistent with our discussion in the NPR to assert jurisdiction in the event that such an aircraft was involved in an accident.[3]

We received no comment on the other issues we raised. Therefore, we adopt our proposal to consider the National Guard, and the Coast Guard within the definition of Armed Forces and to construe the term ''intelligence agency'' only to apply to those Federal agencies that are so named or categorized (for example, in their enabling statutes).

We remind all those now required to report accidents and incidents to us immediately that the scope of reportable events is quite broad and that all personnel involved in aviation matters should be familiar with Title 49 of the Code of Federal Regulations, part 800, which identifies all the instances we investigate and sets forth rules (at part 830) for notifying us of what are termed ''accidents or incidents.''

This amendment of our interpretation does not translate into any change in the rules we proposed. Those rules will be adopted, with one minor editorial change.[4] Accordingly, 49 CFR parts 800, 830, and 831 are amended as set forth below.[5]

[3] We are confident that, with experience, we will develop a mutually agreeable understanding with the Armed Forces and Federal intelligence agencies regarding investigatory roles. We note in this context that, in the past, interagency agreements and other more informal processes have led to our participation, despite any argument that we lacked jurisdiction, in Armed Forces aircraft investigations, whether because the Armed Forces sought our assistance in an aspect of the investigation or because we believed our participation would contribute to furthering our statutory role. We expect this spirit of cooperation will continue and that jurisdictional disputes will be rare.

[4] In § 831.2(a)(1), the phrase ''where the accident involves civil aircraft and certain public aircraft'' is, for clarity, changed to read ''where the accident involves any civil aircraft or certain public aircraft.''

[5] As we noted in the NPR, various rules in these parts require changes to reflect current organization at the Safety Board or recent legislative change. Other rulemakings will shortly be conducted to update these provisions. This proceeding proposes only the changes needed to implement Pub. L. No. 103–411.

List of Subjects

49 CFR part 800

Authority delegations—Government agencies, Organization and functions—Government agencies.

49 CFR Part 830

Aviation safety, Reporting and recordkeeping requirements.

49 CFR Part 831

Aviation safety, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 800 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*); Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*).

2. Section 800.3 is amended by revising paragraph (a) to read as follows:

§ 800.3 Functions.

(a) The primary function of the Safety Board is to promote safety in transportation. The Safety Board is responsible for the investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: all accidents involving civil aircraft, and certain public aircraft; highway accidents including railroad grade-crossing accidents, the investigation of which is selected in cooperation with the States; railroad accidents in which there is a fatality, substantial property damage, or which involve a passenger train; pipeline accidents in which there is a fatality or substantial property damage; and major marine casualties and marine accidents involving a public and non-public vessel or involving Coast Guard functions. The Safety Board makes transportation safety recommendations to Federal, State, and local agencies and private organizations to reduce the likelihood of recurrence of transportation accidents. It initiates and conducts safety studies and special investigations on matters pertaining to safety in transportation, assesses techniques and methods of accident investigation, evaluates the effectiveness of transportation safety consciousness and efficacy in preventing accidents of other Government agencies, and evaluates the adequacy of safeguards and procedures concerning the transportation of hazardous materials.

* * * * *

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

3. The authority citation for part 830 is revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

4. Section 830.1 is revised to read as follows:

§ 830.1 Applicability.

This part contains rules pertaining to:

(a) Initial notification and later reporting of aircraft incidents and accidents and certain other occurrences in the operation of aircraft, wherever they occur, when they involve civil aircraft of the United States; when they involve certain public aircraft, as specified in this part, wherever they occur; and when they involve foreign civil aircraft where the events occur in the United States, its territories, or its possessions.

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil and certain public aircraft accidents, as specified in this Part, in the United States and its territories or possessions.

* * * * *

5. Section 830.2 is amended by revising the definition of ''public aircraft'' to read as follows:

§ 830.2 Definitions.

* * * * *

Public aircraft means an aircraft used only for the United States Government, or an aircraft owned and operated (except for commercial purposes) or exclusively leased for at least 90 continuous days by a government other than the United States Government, including a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of that government. ''Public aircraft'' does not include a government-owned aircraft transporting property for commercial purposes and does not include a government-owned aircraft transporting passengers other than: transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as

firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. Notwithstanding any limitation relating to use of the aircraft for commercial purposes, an aircraft shall be considered to be a public aircraft without regard to whether it is operated by a unit of government on behalf of another unit of government pursuant to a cost reimbursement agreement, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

* * * * *

6. Section 830.5 is amended by revising the introductory text to read as follows:

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (Board) field office [1] when:

* * * * *

7. Section 830.15 is amended by revising paragraph (a) to read as follows:

§ 830.15 Reports and statements to be filed.

(a) *Reports.* The operator of a civil, public (as specified in § 830.5), or foreign aircraft shall file a report on Board Form 6120.½ (OMB No. 3147–0001) [2] within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report on an incident for which immediate notification is required by § 830.5(a) shall be filed only as requested by an authorized representative of the Board.

* * * * *

[1] The Board field offices are listed under U.S. Government in the telephone directories of the following cities: Anchorage, AK, Atlanta, GA, West Chicago, IL, Denver, CO, Arlington, TX, Gardena (Los Angeles), CA, Miami, FL, Parsippany, NJ (metropolitan New York, NY), Seattle, WA, and Washington, DC.

[2] Forms are available from the Board field offices (see footnote 1), from Board headquarters in Washington, DC, and from the Federal Aviation Administration Flight Standards District Offices.

§ 830.20 (Subpart E)—[Removed]

8. Subpart E consisting of § 830.20 of Part 830 is removed.

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

9. The Authority citation for part 831 is revised to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*), and the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

10. Section 831.2 is amended by revising paragraph (a)(1) to read as follows:

§ 831.2 Responsibility of Board.

(a) *Aviation.* (1) The Board is responsible for the organization, conduct and control of all accident investigations within the United States, its territories and possessions, where the accident involves any civil aircraft or certain public aircraft (as specified in § 830.5 of this chapter), including an accident investigation involving civil or public aircraft (as specified in § 830.5) on the one hand and an Armed Forces or intelligence agency aircraft on the other hand. It is also responsible for investigating accidents that occur outside the United States, and which involve civil aircraft and certain public aircraft, when the accident is not in the territory of another state (*i.e.*, in international waters).

* * * * *

11. Section 831.9 is amended to revise paragraph (b) to read as follows:

§ 831.9 Authority of Board Representatives.

* * * * *

(b) *Aviation.* Any employee of the Board, upon presenting appropriate credentials, is authorized to examine and test to the extent necessary any civil or public aircraft (as specified in § 830.5), aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident in air commerce.

* * * * *

Issued in Washington, DC, on this 1st day of August, 1995.

Jim Hall,

Chairman.

[FR Doc. 95–19356 Filed 8–4–95; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 950522140–5192–02; I.D. 050595E]

RIN 0648–XX22

Summer Flounder Fishery; 1995 Recreational Fishery Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues the final specifications for the 1995 summer flounder recreational fishery, which include no seasonal closure, a possession limit, and a minimum fish size. The intent of this rule is to comply with implementing regulations for the fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of the resource.

EFFECTIVE DATE: August 2, 1995, except for an amendment to § 625.25(a) which will be effective August 14, 1995.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border.

Section 625.20 outlines the process for determining annual commercial and recreational catch quotas and other restrictions for the summer flounder fishery. Pursuant to § 625.20, the Director, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the fishing mortality rate specified in the FMP. This rule announces the following

measures pertaining to the recreational fishery, which are unchanged from the proposed measures that were published in the **Federal Register** on May 30, 1995 (60 FR 28082): (1) Elimination of the closed season, (2) an individual possession limit of 6 fish per person, and (3) a minimum fish size of 14 inches (35.6 cm).

Comments and Responses

Two comments were received during the comment period concerning the proposed measures: One from the New Jersey Marine Fisheries Council (NJMFC) and the other from the Virginia Marine Resources Commission. Eight comments were also submitted prior to the Council/ASMFC meeting at which the recreational measures were initially discussed (March, 1995) and those comments are also responded to in this rule.

Comment: The eight individuals who submitted comments prior to the March 1995 Council meeting wrote to state their opposition to imposing any closed season for the recreational fishery. All argued that past closures prior to May 1 and after October 31 have had a disproportionate negative impact on the recreational fishery on the Eastern Shore of Virginia.

Response: This final rule eliminates the closed season.

Comment: The NJMFC opposes the individual possession limit of six fish per person. In March, the Council and ASMFC recommended elimination of the closed season, an eight-fish possession limit, and a 14-inch (35.6-cm) minimum fish size. The State of New Jersey adopted those measures following that meeting. The recommendation was disapproved by NMFS in April. The NJMFC states that it would be impossible administratively for the State to change the possession limit now, and that the charter/party boats possessing Federal permits would be subject to the Federal possession limit, even if fishing exclusively in State waters.

Response: Although consistency between state and Federal regulations is preferred, the State of New Jersey does not need to alter its rules governing State waters. NMFS expects to continue to work with the ASMFC to make State and Federal regulations as consistent as practicable. Until state and Federal rules are consistent, New Jersey charter and party boat owners and operators who fish exclusively in State waters may elect not to fish in Federal waters and cancel their Federal permits.

NMFS recognizes New Jersey's potential difficulty in changing the State possession limit. NMFS must base its decisions on what it believes is necessary to protect the resource in Federal waters, regardless of the fact that Federal and state rules may differ.

Comment: The NJMFC believes that establishing an individual possession limit of six fish per person creates an impression that NMFS is restricting the recreational fishery in order to compensate for the court-ordered increase in the 1995 commercial quota. They note that the court-ordered increase altered the 60 percent-40 percent commercial-recreational catch allocation ratio specified in the FMP.

Response: The court-ordered increase to the commercial sector was specific to the commercial sector. While the court-ordered increase may have changed the commercial-recreational allocation ratio specified in the FMP, no reduction in the recreational allocation was made to compensate for the increase in the commercial sector. The recreational sector is receiving the same amount of fish as it would have received before the court-ordered increase.

Comment: The Virginia Marine Resources Commission endorses the management measures and states that they represent an acceptable conservation regime.

Response: NMFS agrees with this commenter and has implemented the management measures.

Classification

This action is authorized by 50 CFR part 625.

These final specifications are exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds that the elimination of the closed season relieves a restriction and thus, under 5 U.S.C. 553(d)(1), that measure is not subject to a delay in the effective date. The AA also finds that a 30-day delay in effective date of the possession limit would adversely impact the resource because the fishing season has already opened and the more restrictive possession limit is necessary to keep the recreational fishery within its coastwide allocation for 1995. Therefore, the AA finds for good cause under 5 U.S.C. 553(d)(3) that the 30-day delay in effective date for the possession limit should be waived, in part; a 7-day delay in effective date is appropriate in order to provide notice to the fishermen of the change, while still implementing the new possession limit as soon as practicable.

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. Section 625.22 is revised to read as follows:

§ 625.22 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder during the period January 1 through December 31. This time period may be adjusted pursuant to the procedures in § 625.20.

3. In § 625.25, paragraph (a) is revised to read as follows:

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. Persons aboard a commercial vessel that is not eligible for a moratorium permit under § 625.4 are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a moratorium permit under § 625.4(b) are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

* * * * *

[FR Doc. 95–19324 Filed 8–2–95; 10:20 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 151
Monday, August 7, 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

Agricultural Marketing Service

7 CFR Part 58

[DA–95–17]

RIN 0581–AB40

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increases would result in a fee of $43.00 per hour for continuous resident services and $48.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be $52.80 per hour. These proposed fees represent an increase of 80 cents per hour.

The fees are being increased to cover the costs of recent salary increases and locality adjustments, the full funding for standardization activities, and normal inflationary pressures.

DATES: Comments should be mailed by September 6, 1995.

ADDRESSES: Comments should be sent to: Office of the Director, USDA/AMS/Dairy Division, Room 2968–S, P.O. Box 96456, Washington, D.C. 20090–6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750–South Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202)720–9381.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for purposes of Executive Order 12866, and has been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $87,000 during fiscal year 1996. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on February 9, 1994. Since that time, Congress increased the salaries of Federal employees by 2.6 percent as of January 8, 1995, which included locality pay. Also, there have been normal increases in other operating costs. In addition, recent congressional action may result in additional salary increases of 2.4 percent in 1996. Although the program's operating reserves were adequate to cover the January 8, 1995, salary increase, this will not be the case for 1996 salary increases, and a fee increase is needed.

The grading program fees also need to be increased to cover the remaining costs related to the development of dairy product standards and other activities now performed by the Dairy Division's Standardization Branch. In FY 1994 Congress appropriated money for the development of standards by the Agricultural Marketing Service but at the same time stipulated that the program costs be recovered through user fees, with the fees being turned over to the U.S. Treasury. The fee increase which took effect on February 9, 1994, provided for ⅔ of the cost of that program. Since the dairy standardization program is an essential part of the dairy grading program, it is appropriate that all of the standardization program costs be recovered through the fees charged the users of the grading program. The projected cost of the dairy standardization program for FY 1996 is $440,000.

Proposed Changes

This rule proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $47.20 to $48.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increase the hourly fee for continuous resident services from $42.20 to $43.00. The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

Timing of Fee Increase

It is contemplated that the proposed fee increases would be implemented on

an expedited basis in order to minimize the period of revenue shortfall. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication, or very soon after publication, of the final rule in the **Federal Register** and that delaying the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be October 1, 1996.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 58 be amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $48.00 for service performed between 6:00 a.m. and 6:00 p.m. and $52.80 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $43.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: July 31, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19331 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 987

[Docket No. FV95–987–1PR]

Domestic Dates Produced or Packed in Riverside County, California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 987 for the 1995–96 crop year. Authorization of this budget would enable the California Date Administrative Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by September 6, 1995.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; or Maureen Pello, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, California dates are subject to assessments. Funds to administer the California date marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates during the 1995–96 crop year which begins October 1, 1995, and ends September 30, 1996. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf.

Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 producers of California dates under the marketing order and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of California date producers and handlers may be classified as small entities.

The budget of expenses for the 1995–96 crop year was prepared by the California Date Administrative Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are, thus, in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

The Committee met on May 18, 1995, and by votes of 6 to 3 recommended a 1995–96 assessment rate and operating expenses and increased market promotion expenses to fund the Committee's marketing plan. The two handlers voting against the funding for the marketing plan believe individual handlers should do more advertising on their own; the other no vote came from a producer who expressed concerns about the outstanding assessments owed the Committee. However, the majority of Committee members expressed the need for the industry to work together to promote California dates and help reduce current inventories.

The 1995–96 budget of $774,218 is $203,218 more than the previous year. Included in the budgeted expenditures is an operating budget of $160,000, $24,865 more than last year, with a 26.25 percent surplus account allocation, for a net operating budget of $118,000, or $18,000 more than last year. Also included is $656,218 allocated for market promotion, $206,218 more than last year.

Budget items for 1995–96 which have increased compared to those budgeted for 1994–95 (in parentheses) are: Executive Director's salary, $66,000 ($57,500), Marketing Assistant's Salary, $24,000 ($18,500), health and welfare benefits, $10,500 ($8,500), payroll taxes, $8,000 ($5,814), rent, $7,500 ($7,000), professional services—accounting, $3,000 ($2,000), contingency, $5,200 ($221), consumer public relations, $151,500 ($60,000), consumer media, $336,218 ($265,000), industrial promotion, $115,000 ($30,000), and $13,000 for a secretary/receptionist and $6,000 for export promotion, for which no funding was recommended last year. Items which have decreased compared to the amount budgeted for 1994–95 (in parentheses) are: Copier lease and maintenance, $2,100 ($2,400), retail trade promotion, $35,000 ($45,000), and ($4,000) for equipment for marketing efforts, for which no funding was recommended this year. All other items are budgeted at last year's amounts.

The assessment rate of $2.25 per hundredweight is $0.75 more than last season. This rate, when applied to anticipated date shipments of 36,000,000 pounds (360,000 hundredweight), would yield $810,000 in assessable income. This, along with $1,000 in interest income, would result in $36,782 in excess income which would be allocated to the Committee's reserve. Funds in the reserve as of September 30, 1996, which the Committee estimates would be $235,782, should be within the maximum amount permitted by the order. Funds held by the Committee at the end of the crop year, including the reserve, which are in excess of the crop year's expenses may be used to defray expenses for four months and thereafter the Committee shall refund or credit the excess funds to the handlers.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 987.338 is added to read as follows:

§ 987.338 Expenses and assessment rate.

Expenses of $774,218 by the California Date Administrative Committee are authorized, and an assessment rate of $2.25 per hundredweight of assessable dates is established for the crop year ending September 30, 1996. Unexpended funds may be carried over as a reserve within the limitations specified in § 987.72(c) and (d).

Dated: July 31, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–19332 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 51, 70, and 72

RIN 3150–AD65

Radiological Criteria for Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Announcement of extension in schedule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing an extension in the schedule for the final rule on radiological criteria for decommissioning. The reason for the extension is to allow the NRC to more fully consider public comments received on the technical information base supporting the proposed rule and to develop the implementing regulatory guidance to be issued with the final rule. It is expected that the final rule will be issued in early 1996.

FOR FURTHER INFORMATION CONTACT: John E. Glenn, (301) 415–6187, or Frank

Cardile, (301) 415–6185, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION: On August 22, 1994, the Commission issued a **Federal Register** notice (FRN) (59 FR 43200) requesting public comment on a proposed amendment to its regulations which would provide specific radiological criteria for the decommissioning of lands and structures at NRC-licensed nuclear facilities. The FRN announced that the public comment period was to close on December 20, 1994. Subsequently, the public comment period was extended to January 22, 1995. To date, 101 comment letters have been received. The comments contained in these letters are being characterized and considered in the development of a final rule.

The preliminary schedule of the final rule anticipated issuance of a final rule in the summer of 1995. However, the NRC has decided to extend the date for issuance of this rule to allow it to more fully consider public comments received on the technical information base supporting the proposed rule and to develop the implementing regulatory guidance to be issued with the final rule. The rationale for the extension is discussed more fully below.

Characterization of the comments on the proposed rule and the supporting technical basis has indicated that a number of comments were received regarding the adequacy of the risk and cost analysis supporting the proposed criteria in the rule. One particular area questioned was whether the reference facilities used in the Draft Generic Environmental Impact Statement DGEIS (NUREG–1496) as a basis for the analyses adequately model the complex contamination situations occurring at nuclear facilities. The intent of the analysis in the DGEIS was to employ reference sites and to perform screening analyses. In support of this effort, the NRC staff used site data, where available, supplemented by engineering judgment and theoretical analyses.

However, the NRC staff believes that the supporting information bases for the final rule will be significantly improved by including an evaluation of addItional data from site characterizations and decommissionings. Although the real world data are not as complete as might be wished, there are data on total costs, volumes of waste, survey costs and concentrations left at release that the staff believes can be useful. The information generated through this evaluation will be used in considering how to resolve public comments on the proposed rule including the appropriateness of the 15 mrem/yr limit for release of a site for unrestricted use contained in 10 CFR 20.1404(a) and the criteria for allowing restricted release contained in 10 CFR 20.1405.

In addition to its further analysis of public comments, the NRC staff has decided that, prior to release of a final rule, it would assess its planned regulatory guide implementation model to provide assurance that the model is an adequately conservative screening tool and is capable of incorporating more realistic scenarios than those in the basic screening version. In particular, this assessment would include a sensitivity analysis of the NUREG/CR–5512 modeling methodology to determine the acceptable range of parameters for screening analyses. The NRC staff is considering holding a public meeting in September 1995 to address specific issues associated with development of regulatory guidance implementing the final rule. More detailed information about that meeting will be provided in the near future.

Based on the activities discussed above with regard to the assessment of the supporting analysis, and the further development of the regulatory guidance, the staff expects to provide a final rule to the Commission during December 1995, and to issue a final rule in early 1996.

Separate Views of Commissioner de Planque: I agree with the Commission's decision to allow staff additional time to consider public comments on the proposed final rule on radiological criteria for decommissioning. I have read virtually all of the public comments and conclude that two major issues not specifically identified in this FRN need to be carefully considered by the staff before proceeding to finalize the rule. These are: (1) Is there an adequate technical basis for selecting a dose criterion of 15 mrem in contrast to a 25 or 30 mrem value that would be consistent with the recommendations of international and national organizations for radiation protection? Staff's examination of this issue should consider the cost/benefit basis for selecting a value. (2) Are the fundamental, underlying assumptions used in the models, in particular, the assumption of a 70-year residence and significant subsistence farming on a decommissioned site, realistic and appropriate to apply to decommissioned sites in the U.S.? Unnecessarily conservative assumptions will lead to cleanup of radioactivity to levels so low that it will be difficult, if not impossible, to determine compliance and the effort will be extremely expensive for licensees.

Dated at Rockville, Maryland, this 19 day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–19358 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–25–AD]

Airworthiness Directives; Fairchild Aircraft SA226 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 Fairchild Aircraft SA226 series airplanes equipped with a part number (P/N) 27–5500–229 actuator assembly. The proposed action would require replacing the main landing gear door actuator tang and associated hardware with parts of improved design. Reports of the main landing gear doors hanging up and locking the landing gear links on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center.

DATES: Comments must be received on or before September 29, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–25–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 Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer,

FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

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. 95–CE–25–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. 95–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of three incidents where the main landing gear door actuation roller on Fairchild Aircraft SA226 series airplanes contacted the lower edge of the main landing gear door lower tang. This caused the main landing gear linkage to go over-center during retraction, which locked the linkage and prevented main landing gear extension.

Fairchild Service Bulletin (SB) 226–32–059, Issued: February 14, 1991, specifies procedures for replacing the main landing gear door tangs and associated hardware on Fairchild Aircraft SA226 series airplanes with parts of improved design, part numbers 27–55001–299 and 27–55001–301.

After examining the circumstances and reviewing all available information related to the incidents described above including the service information, the FAA has determined that AD action should be taken to prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 series airplanes of the same type design that are equipped with a P/N 27–5500–229 actuator assembly, the proposed AD would require replacing the main landing gear door tangs and associated hardware with parts of improved design. Accomplishment of the proposed action would be in accordance with Fairchild Aircraft SB 226–32–059, Issued: February 14, 1991.

The FAA estimates that 307 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $114 (two main landing gear door actuator tang kits per airplane at $57 each) per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $108,678.

Fairchild Aircraft has informed the FAA that enough main landing gear door actuator tang kits have been distributed to equip 11 of the affected airplanes (22 kits). Assuming each of these kits is installed on an affected airplane, the cost impact upon U.S. operators of the affected airplanes would be reduced $3,894 from $108,678 to $104,784.

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 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Fairchild Aircraft: Docket No. 95–CE–25–AD.

Applicability: The following airplane models and serial numbers that are equipped with a part number (P/N) 27–5500–229 actuator assembly, certificated in any category:

Model	Serial Nos.
SA226–T	T201 through T275 and T277 through T291.
SA226–T(B)	T(B) 276 and T(B) 292 through T(B) 417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.

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 (c) of this AD 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 within the next 1,000 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inability to extend the main landing gear because of the main landing gear door actuation roller contacting the lower edge of the tang and causing the linkage to lock over-center, accomplish the following:

(a) Replace the main landing gear door actuator tangs and associated hardware, part numbers 27–55001–249 and 27–55001–250, with new tangs and hardware of improved design, part numbers 27–55001–299 and 27–55001–301. Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin 226–32–059, Issued: February 14, 1991.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(d) All persons affected by this directive may obtain copies of the service bulletin referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this service bulletin 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 July 25, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18713 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC00

Revision of Valuation Regulations Governing Coal Washing and Transportation Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its Royalty Management Program (RMP) valuation regulations governing coal washing and transportation allowances regarding the timely filing of required forms.

DATES: Comments must be submitted on or before October 6, 1995.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225–0165.

FOR FURTHER INFORMATION CONTACT: David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, Fax (303) 231–3194.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Harry Corley, Valuation and Standards Division, MMS, RMP.

I. Background

On January 13, 1989, MMS published a final rule in the **Federal Register** governing the valuation of coal for royalty computation purposes (54 FR 1492). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands, including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for certain washing allowances (30 CFR §§ 206.258 and 206.259) and transportation allowances (30 CFR §§ 206.261 and 206.262) for coal.

The rulemaking distinctly changed the historical administrative practice of MMS and its predecessor agency, the U.S. Geological Survey, regarding allowances. Prior to the 1988 rule, MMS required royalty payors to obtain the agency's written approval before taking an allowance deduction in reporting and paying royalties. With the new rule, MMS adopted a self-implementing concept for allowances. Instead of requiring agency preapproval, the regulations provided for the royalty payor to file timely certain required forms as a condition for the taking of an allowance on the Report of Sales and Royalty Remittance (Form MMS–2014).

The allowance forms filing requirements of the current coal valuation regulations provide for an annual cycle for providing information to the MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS–2014, payors must submit the required form for any coal washing and coal transportation allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

By the end of March following the allowance year, the payor must submit the same forms as before but with additional data fields completed to indicate the actual costs experienced and the allowances actually taken on Forms MMS–2014 during the year. Also, several supplementary schedules representing details of actual costs must be submitted for non-arm's-length allowances.

The filing of the actual cost forms serves several purposes for MMS and the payor. The forms provide the actual costs incurred in transporting and/or processing (washing) production for the allowance year, together with the actual allowance deductions taken on the Form MMS–2014. The forms also satisfy the regulatory requirement to have an estimated cost allowance form on file for the succeeding allowance year.

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS–2014 without a required form on file, the payor is subject to loss of allowance and to late-payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged a late payment interest amount associated with the lost allowance. The current regulations provide for a ''grace period'' of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS–2014 for up to three months prior to the month that a required allowance form is filed with MMS. Although a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the date of the taking of the allowance on Form MMS–2014 to the receipt date of the filing of the required allowance form. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

In evaluating the effectiveness of its rules, particularly as they related to product valuation, MMS published in the June 17, 1992, **Federal Register**, a ''Request for Information for Improvements to Regulations'' (57 FR 27008). MMS' request stated that the rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with the creation of the Royalty Management Advisory Committee. The request further stated that it had been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments were requested to help MMS assess where improvements to rules could be made. The comment period closed August 17, 1992.

Many commenters felt that the allowance form filing requirements of the valuation regulations needed improvement. They expressed concerns about both the allowance form filing requirements and the regulatory sanctions for failure to comply with the allowance reporting requirements. Suggested recommendations ranged from refinements of existing forms to a wholesale elimination of allowance form filings because they serve no useful purpose. Regarding sanctions for failure to timely file required allowance forms, commenters stated that the existing penalties were unduly harsh and that the ''punishment'' is not reflective of the ''crime.''

II. Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the valuation regulations, MMS formed a study group in April 1993 to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. The study group's findings, conclusions, recommendations, and alternative approach for allowances are presented in the preamble to the proposed rule titled, ''Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances.'' This proposed rule is published separately in the **Federal Register**.

III. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report. Additionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

a. Failure To File Assessment

The study group did not specify in its alternative approach a fixed percentage assessment for payors' failure to timely file actual cost forms. For purposes of this rulemaking, MMS included a percentage rate of 10 percent. MMS specifically requests comments on this rate or an alternative rate. MMS also requests specific comments on whether or not an upper limit, or cap, should be established for such assessments, and how the upper limit should be constructed; e.g., absolute dollar amount per occurrence, etc.

b. Improper Netting Assessment

Another change involves the introduction of an assessment for the ''improper netting'' of allowances against royalty value when reporting royalties on Form MMS–2014. ''Improper netting'' is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation, supported by two separate invoices, are improperly reported on the payor's Form MMS–2014 as a one-line transaction. The proposed assessment is 20 percent or twice the assessment (10 percent) that is proposed for failure to timely file required allowance forms. MMS has determined that improper netting should carry an increased assessment because the practice represents, in effect, concealment of information with adverse impacts on MMS' efforts to monitor the accuracy of royalty payments. MMS specifically requests comments on the 20 percentage rate proposed and whether an upper limit or cap should be established and how it should be constructed.

c. Erroneous Reporting Assessment

MMS also proposes an assessment for reporting erroneous information on required allowance forms. MMS continues to experience significant additional workload caused by erroneously reported information on allowance forms. MMS seeks to establish an erroneous reporting assessment to encourage more accurate reporting. This proposed assessment authority currently exists for monthly production and royalty reports. An assessment has proven to be an effective tool to improve the accuracy of reported information.

d. Technical Corrections

MMS proposes several technical corrections and clarifications.

IV. Proposed Amendments

Although the study group recommendations addressed oil and gas allowances, MMS has determined that they also apply to coal because the regulatory approach to forms filing requirements and sanctions applies to both categories of minerals.

Therefore, MMS is proposing to amend its valuation regulations to change the allowance forms filing requirements for coal. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments and sanctions for (1) failure to properly report allowances as separate lines on Form MMS–2014, a practice commonly referred by MMS as ''netting''; and (2) reporting erroneous information on required allowance forms. Lastly, MMS is proposing several minor technical corrections and clarifications.

a. Coal Washing Allowances

MMS proposes to amend § 206.259 by deleting the third and fourth sentences of paragraph (a)(1) that state:

> However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the following two sentences:

> Before any washing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would be adopting the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month

filing limitation; and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal washing allowances.

MMS proposes to amend § 206.259(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the following two sentences:

Before any washing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292 in accordance with (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal washing allowances; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.259(b)(1) by deleting from the seventh sentence the phrase ''* * * estimated or * * *'' The seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

MMS is proposing this change to simplify its coal washing allowance reporting requirements and to comply with the study group's report.

MMS proposes to amend § 206.259 (c)(1) by deleting existing paragraphs (i), (ii), and (iii) and add new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) Simplify coal washing allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take washing allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.259(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii), to read as follows:

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4292 for the actual washing allowance calculated for the reporting period. Form MMS–4292 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission on an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

Consistent with this amendment, paragraphs (v), (vi) and (vii), would be redesignated (iv), (v), and (vi).

MMS is proposing technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.259(c) by adding paragraph (5) to read:

A lessee is required to file a new Form MMS–4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS–2014.

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.259(d) by changing the title to read:

(d) Interest charges and assessments for incorrect or late reports and failure to report.

This change would better define and clarify the purpose of this section.

MMS proposes to amend § 206.259(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS may levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a washing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4292 was due until the date that the form was received.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Takes a washing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

b. Coal Transportation Allowances

MMS proposes to amend § 206.262 by deleting the third and fourth sentences of paragraph (a)(1) that state:

However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the two deleted sentences the following two sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

By implementing these changes, MMS would adopt the recommendations of the study group's report. These changes allow MMS to: (1) Focus its allowance administration efforts on actual data reported annually to MMS rather than on estimated allowance rates reported at the beginning of the allowance year; (2) eliminate the retroactive three-month filing limitation, and (3) simplify allowance reporting procedures by incorporating the new reporting form for coal transportation allowances.

MMS proposes to amend § 206.262(b)(1) by deleting the fourth and fifth sentences that state:

However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the two deleted sentences the two following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293 in accordance with paragraph (c)(2) of this section.

MMS is proposing these changes to keep in line with the recommendations of the study group. These changes would allow MMS to: (1) Focus its allowance administrative efforts on actual cost data rather than on estimated cost data; (2) eliminate the three-month filing limitation for coal transportation allowance; and (3) simplify allowance reporting requirements.

MMS proposes to further amend § 206.262(b)(1) by deleting from the seventh sentence the phrase ''* * * estimated or * * *'' The seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

This change would simplify MMS' coal transportation allowance reporting requirements in accordance with the study group's report.

MMS proposes to amend § 206.262(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs (i), (ii), (iii), and (iv) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4293 for the actual transportation allowances calculated for the reporting period. Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable time, as determined by MMS.

MMS proposes these changes to implement the study group's recommendations. These changes would: (1) simplify coal transportation allowance reporting procedures; (2) implement a new allowance form to show the payor's intent to take transportation allowances for the current year; and (3) provide greater administrative focus on actual data rather than on estimated data submitted by the payor.

MMS proposes to amend § 206.262(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs (i), (ii), and (iii) that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi), of this section, the lessee must file a Form MMS–4402 for transportation allowance estimates for each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct

a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4293 for the actual transportation allowance calculated for the reporting period. The Form MMS–4293 is due within three months after the end of the reporting period, unless MMS approves a longer period.

These changes would address the study group's recommendations concerning MMS' administration of allowances and the need to focus on actual data reported annually rather than the current focus on estimated allowance rates reported at the beginning of each allowance year. Accordingly, MMS would continue to require the submission of an annual form which notifies MMS of the payor's intent to take allowance deductions from the royalty value.

Consistent with this amendment, paragraph (iv) of § 206.262(c)(2) would be removed and existing paragraphs (v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

MMS would also make technical corrections to this section as a result of adopting changes recommended by the study group.

MMS proposes to amend § 206.262(c) by adding paragraph (5) that reads:

A lessee is required to file a new Form MMS–4293 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS is proposing this change to comply with the study group's report. This change emphasizes MMS' focus on collecting actual data as opposed to estimated data and allows adjustments to allowance data previously submitted to MMS.

MMS proposes to amend § 206.262(d) and revise the title that would read:

(d) *Interest charges and assessments for incorrect or late reports and failure to report*

MMS is making corrections to the regulations by adding language that would further define and clarify the purpose of this section.

MMS proposes to amend § 206.262(d) by deleting paragraphs (1), (2) and (3) replacing them with the following schedule:

(d) Interest charges and assessments for incorrect or late reports and failure to report. MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4293.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4293 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equivalent to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equivalent to late-payment interest from the date the actual cost information was due until the date the form was actually received.

The public is invited to participate in this rulemaking action by submitting data, views, or arguments with respect to this notice. All comments must be received by 4:00 p.m. of the day specified in the **DATE** Section and at the location in the **ADDRESSES** section of this preamble.

V. Other Matters

Separate regulations concerning valuation of natural gas for royalty purposes are currently being developed for Federal leases and for Indian leases through two separate negotiated rulemaking committees. These committees are addressing both natural gas valuation and transportation and processing allowance issues.

The committee addressing natural gas valuation for Federal leases recommended in its March 1995 report that transportation and processing allowance forms no longer be required. This recommendation is one of numerous recommendations for broad changes to existing regulations governing the valuation of natural gas produced from Federal leases. The future rulemaking to be prepared considering the recommendations of the Federal negotiated rulemaking committee will include the proposal for eliminating the requirement for allowance forms.

The amendments to the coal valuation regulations related to allowances being proposed today mirror changes being proposed by separate rulemaking to the oil and gas valuation regulations related to allowances. The changes being proposed to the coal and the oil and gas allowance rules may ultimately be reconsidered depending on the outcome of the future gas valuation rulemaking developed from the recommendations of the Federal negotiated rulemaking committee.

MMS also would like comment on the effective date for the final rule. One option is to make any final rule effective as of January 1, 1995, the beginning of the current allowance year. Another option is to make the rule effective as of the date of publication of this proposed rule since royalty payors are on notice of the possible rule change on that date. Commenters should address this issue in their comments.

VI. Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The proposed rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on coal produced from Federal and Indian lands.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned Clearance Numbers 1010–0022, 1010–0074, and 1010–0099.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

Subpart F—Coal

1. The authority citation for Part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 206.259 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iii), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (vii) as paragraphs (c)(2)(iv) through (vi), revising newly designated paragraphs (c)(2)(iv) through (vi), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.259 Determination of washing allowances.

(a) * * *

(1) For washing costs incurred by a lessee pursuant to an arm's-length contract, the washing allowance will be the reasonable actual costs incurred by the lessee for washing the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any washing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs washing for itself, the washing allowance will be based upon the lessee's reasonable actual costs. All washing allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of washing allowances is not required for non-arm's-length or no contract situations. Before any washing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4292 in accordance with (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual washing allowance.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4292 for washing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

* * * * *

(2) * * *

(i) With the exception of those washing allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for washing allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a washing allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4402 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a washing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4292 for actual washing allowances calculated for the reporting period. Form MMS–4292 is due within three months after the end of the reporting period, unless MMS approves a longer period.

(iv) Washing allowances based on non-arm's-length or no-contract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS–4292. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(3) * * *

(4) * * *

(5) A lessee is required to file a new Form MMS–4292 if adjustments are made to actual non-arm's-length washing allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a washing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4292 was due until the date that the form was received.
Takes a washing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a washing allowance that results in an underpayment of royalties.		On the amount of the underpayment.

* * * * *

3. Section 206.262 is amended by revising paragraphs (a)(1), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (iv), redesignating paragraphs (c)(2)(v) through (viii) to paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2)(iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.262 Determination of transportation allowances.

(a) * * *

(1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the coal under that contract, subject to monitoring, review, audit, and possible future adjustment. MMS' prior approval is not required before a lessee may deduct costs incurred under an arm's-length contract. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent To Take Transportation and Washing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance shall be based upon the lessee's reasonable actual costs. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of transportation allowances is not required for non-arm's-length or no-contract situations. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4402, Notice of Intent to Take Coal Transportation and Washing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4402 reporting period, the lessee must file a Form MMS–4293 in accordance with paragraph (c)(2) of this section. MMS shall monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due shall be considered timely received.

(ii) The Form MMS–4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file page one of Form MMS–4293 for the actual transportation allowances calculated for the reporting period. Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv) and (vi) of this section, the lessee must file a Form MMS–4402 for transportation allowances each calendar year. The lessee must file the Form MMS–4402 by the due date of the first sales month in

which a transportation allowance is reported on Form MMS–2014. A Form MMS–4402 received by the end of the month that Form MMS–2014 is due shall be considered timely received.

(ii) The Form MMS–4402 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year.

(iii) After the Form MMS–4402 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4293 for the actual transportation allowance calculated for the reporting period. The Form MMS–4293 is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract-based transportation allowances that are in effect at the time these regulations become effective shall be allowed to continue until such allowances terminate. For purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee must submit all data used to prepare its Form MMS–4293. The lessee must provide requested data within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements that are different from the requirements of this section.

(vii) If the lessee is authorized to use its Federal or State agency-approved rate as its transportation cost in accordance with paragraph (b)(3) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(5) A lessee is required to file a new Form MMS–4293 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4402	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4293.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4293 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		On the amount of the underpayment.

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30 CFR Part 206

RIN 1010–AB94

Revision of Valuation Regulations Governing Oil and Gas Transportation and Processing Allowances

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) proposes to amend its Royalty Management Program (RMP) valuation regulations governing oil and gas transportation and processing allowances regarding the timely filing of required forms.

DATES: Comments must be submitted on or before October 6, 1995.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3101, Denver, Colorado, 80225–0165.

FOR FURTHER INFORMATION CONTACT: David Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, Fax (303) 231–3194.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Janet Chichester, Compliance Verification Division, MMS, RMP.

I. Background

On January 15, 1988, MMS published a final rule in the **Federal Register** amending and clarifying regulations governing the valuation of oil and gas for royalty computation purposes (53 FR 1184). The rulemaking provided comprehensive procedures for valuation of minerals produced from Federal and Indian lands including regulations governing certain allowances considered in calculating and reporting royalties. The regulations provided for transportation allowances for oil (30 CFR §§ 206.104 and 206.105); transportation allowances for gas (30 CFR §§ 206.156 and 206.157); and processing allowances for gas (30 CFR §§ 206.158 and 206.159).

The rulemaking distinctly changed the historical administrative practice of MMS and its predecessor agency, the U.S. Geological Survey, regarding allowances. Prior to the 1988 rule, MMS required royalty payors to obtain the agency's written approval before taking an allowance deduction in reporting and paying royalties. With the new rule, MMS adopted a self-implementing concept for allowances. Instead of requiring agency preapproval, the regulations provided for the royalty payor to file timely certain required forms as a condition for the taking of an allowance on the Report of Sales and Royalty Remittance (Form MMS–2014).

The allowance forms filing requirements of the current oil and gas valuation regulations provide for an annual cycle for providing information to MMS. Before the beginning of each calendar year, or during the year but before the taking of an allowance on the Form MMS–2014, payors must submit the required form for any oil transportation, gas transportation, or gas processing allowances that they expect to take during the year. The forms ask for information sufficient to identify the payor, the lease/revenue source/product

code/selling arrangement, and an estimate of the allowance rate per unit that is anticipated for the year.

By the end of March following the allowance year, the payor must to submit the same forms as before but with additional data fields completed to indicate the actual costs experienced and the allowances actually taken on Forms MMS–2014 during the year. Also, several supplementary schedules representing details of actual costs must be submitted for non-arm's-length allowances.

The filing of the actual cost forms serves several purposes for MMS and the payor. The forms provide the actual costs incurred in transporting and/or processing production for the allowance year, together with the actual allowance deductions taken on the Form MMS–2014. The forms also satisfy the regulatory requirement to have an estimated cost allowance form on file for the succeeding allowance year.

The consequences of a payor's noncompliance with the forms filing requirements of the regulations are monetarily significant. Simply stated, if a payor takes an allowance deduction against royalty value on the Form MMS–2014 without a required allowance form on file, the payor is subject to loss of allowance and to late payment interest charges. The concept of the regulations is that a required form must be on file before the taking of an allowance; if a payor does not meet this requirement MMS considers the allowance to be lost by the payor. Consequently, the payor is directed to pay back the allowance and, after payback, is charged late payment interest associated with the lost allowance.

The current regulations provide for a grace period of three months that gives payors a window of time to comply with the forms filing requirements of the regulations without losing an allowance. The grace period permits lessees to retain allowances reported on a Form MMS–2014 for up to three months prior to the month that a required allowance form is filed with MMS. Though a payor will not experience a loss of allowance for the grace period, MMS will assess the payor a late payment interest charge from the Form MMS–2014 receipt date or due date (whichever is later) to the allowance form receipt date. By regulation, MMS may approve a grace period longer than three months upon a showing of good cause by the lessee.

In evaluating the effectiveness of its rules, particularly as they related to product valuation, MMS published in the June 17, 1992, **Federal Register**, a ''Request for Information for Improvements to Regulation'' (57 FR 27008). MMS' request stated that the rules for product valuation were substantially modified in 1988 based on an effort started in January 1985 with the creation of the Royalty Management Advisory Committee. The request further stated that it had been several years since most of the regulations in 30 CFR Parts 201 through 243 were published, and public comments were requested to help MMS assess where improvements to rules could be made. The comment period closed August 17, 1992.

Many commenters felt that the allowance form filing requirements of the valuation regulations needed significant commentary as being in need of improvement. They expressed concerns about both the allowance form filing requirements and the regulatory sanctions for failure to comply with the allowance reporting requirements. Suggested recommendations ranged from refinements of existing forms to a wholesale elimination of allowance form filings because they serve no useful purpose. Regarding penalties for failure to timely file required allowance forms, commenters stated that the existing penalties were unduly harsh and that the ''punishment'' is not reflective of the ''crime.''

II. Findings and Conclusions of Allowance Study Group

Based on public comments and the over four years of experience MMS gained in administering the allowance requirement of the oil and gas valuation regulations, MMS formed a study group in April 1993, to evaluate the existing regulatory requirements for oil and gas allowances and formulate recommendations for improvement. The study group was comprised of participants from the Council of Petroleum Accounting Societies, the State and Tribal Royalty Audit Committee, and MMS. Consistent with its charter, the study group addressed the current regulatory requirements and practices of MMS related to oil and gas transportation and processing allowances. More specifically, the study group addressed the following topics as key aspects of the review:

- The need for and usefulness of the current regulatory requirements for allowance forms submission, including the information required on each form.
- The need for and equity of allowance payback and late payment interest charges for untimely filed forms.
- The need for regulatory approval thresholds; e.g., 50 percent (transportation) and 66⅔ percent (processing).
- Alternative approaches to administering allowances. The study group report was issued December 3, 1993. The report was subsequently endorsed by the Royalty Management Advisory Committee at its December 14, 1993, public meeting in Lakewood, Colorado. A copy of the study group report may be obtained by contacting the person identified in the ''For Further Information Contact'' section of this Notice.

The principal ''Findings and Conclusions'' of the study group are, by topic, as follows:

a. The Need for and Usefulness of the Current Regulatory Requirement for Allowance Forms Submission, Including the Information on Each Form

The study group found that the concept of requiring the filing of forms that contain information supplementary to that presented on the Form MMS–2014 was reasonable. However, the study group also found that the current approach to information filings is flawed in terms of the information on which the regulatory requirements focus. Although the current approach places substantial focus on ''estimated'' allowance filings that payors are required to submit to MMS prior to taking an allowance deduction on the Form MMS–2014, the most useful and accurate information is the actual cost information payors provide on required forms after the end of the allowance year. The study group concluded that MMS should maintain allowance information filing requirements to the extent that MMS, States, and Tribes use the information.

Furthermore, the study group concluded that MMS' administration of allowances should focus on actual data reported annually to MMS rather than the current focus on estimated allowance rates reported at the beginning of the allowance year. The study group concluded that it was necessary for MMS to continue its practice under current regulations of requiring the submission of an annual form notifying the agency of the payor's intent to take an allowance deduction from royalty value but that estimated allowance rates should not be required as a part of the information filing.

b. The Need for and Equity of Allowance Payback and Late Payment Interest Charges for Failure To File Forms

The study group found that while substantial compliance with forms filing requirements does exist, the penalty of

a complete loss of allowance due to the untimely filing of required forms ''was not consistent with the crime.'' The study group addressed several alternatives to a payback penalty under the current concept of requiring a form to be on file prior to the taking of an allowance. The group observed that the payback penalty was rooted in the concept that qualification for an allowance deduction was subject to the filing of a form. While the study group did not reject this concept, it concluded that the penalty of a loss of allowance was not necessarily consistent with the agency's objectives.

The group observed that the agency's primary interest is effectively administering allowances through a regulatory information gathering and notice process. The objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions as opposed to generating a revenue stream by focusing sanctions on the filing dates of forms containing estimated cost information. The group was able to reach agreement that the current payback sanction was excessive after considering a number of alternatives. The study group reached an agreement on the option of ''Federal Oil and Gas Royalty Management Act (FOGRMA) Late Payment Interest plus a Fixed Percentage of the Amount of the Allowance'' as the preferred alternative to the payback. However, the group was not able to reach agreement on the specific fixed percentage of the allowance amount.

c. The Need for Regulatory Approval Thresholds

The study group concluded that the current thresholds should remain in place. Their conclusion was based on the relatively low activity level of requests to exceed the current thresholds of 50 percent for transportation allowances and 66⅔ percent for processing allowances. It also was based on the reasonableness of providing increased agency scrutiny to those instances involving allowance costs that consume an unusually large amount of the royalty value.

d. Alternative Approaches to Administer Allowances

The study group formulated a proposed alternative approach to information gathering for allowance administration. This approach is further discussed later in the preamble.

III. Recommendations of the Study Group

The study group recommended that MMS:

a. On a prospective basis, pursue changing its current regulatory reporting requirements in several respects. These changes should reduce the focus on the submittal of estimated allowance information that has little value to the agency and increase the focus on the actual information that has substantive value to the agency. Complete implementation of this recommendation could involve changes in regulations, forms, and systems software over a period of several years. In the near term, MMS should expedite those changes that do not require regulatory action; e.g., changes to the current allowance forms.

b. On a prospective basis, pursue changing, consistent with the first recommendation, the current regulatory sanctions for failure to timely file required allowance forms. Sanctions should be changed to create meaningful incentives for payors to file actual cost allowance forms. Existing sanctions in the form of allowance payback and late payment interest for the ''estimated'' cost information should be changed consistent with the proposed alternative approach to administering allowances.

c. Retain the existing regulatory requirements that payors receive annual agency approval prior to taking transportation and processing allowances that exceed 50 percent and 66⅔ percent, respectively, of the royalty value of the product subject to the allowance deduction.

d. Publish the results of the public commentary received in response to the **Federal Register** Notice dated November 28, 1988, regarding extraordinary cost allowances. Further comment should also be solicited to identify circumstances that may have developed in the interim that MMS should consider.

e. Pursue establishing automated data bases to capture the detailed actual allowance cost information payors submit and develop and implement edits and exception processing routines to monitor actual allowance costs reported on allowance forms and the Form MMS–2014.

IV. Alternative Approach Suggested by Study Group

The study group's report provided an alternative approach to administering allowances based on its conclusions that:

- MMS should continue to focus on the administration of allowances through information gathering methods that supplement the Form MMS–2014.
- MMS should focus its allowance administration efforts on actual costs instead of estimated costs.
- The current penalty structure for failing to file required forms not only places undue focus on estimated allowance information but also results in penalties ''inappropriate for the crime.''

The study group believed that the alternative approach would provide MMS with the necessary notice and information that it needs to properly administer allowances, reduce current information reporting requirements, and possess sufficient incentives for payors to comply with the reporting requirements of the regulations. Prototype forms were also developed that could be used in the process of implementing the alternative approach.

The framework of the alternative approach the study group developed is described below:

a. Royalty payors would continue to be required to submit a Notice of Intent to Take Transportation and Processing Allowances prior to the beginning of each allowance year or within the allowance year. One form, instead of three, would be used for all allowance types and would be filed at the payor code/lease level rather than the payor code/lease number/revenue source/product code/selling arrangement level. The report would not include an estimated rate. Failure to file this notice would constitute a missing report with the payor being assessed $10 per allowance line required on the Notice of Intent To Take Transportation and Processing Allowances.

b. Three months following the end of each allowance year, the payor would continue to file an actual cost allowance report. For arm's-length allowances, the report would show the payor code/lease number/revenue source/product code/selling arrangement on which allowances were taken. MMS would gather actual cost data from the AFS as needed. For non-arm's-length allowances, the detailed cost breakouts currently required would continue to be provided. MMS would continue to grant, upon request, extensions of up to three months to file actual cost reports.

Payors failing to timely file required forms would be assessed an amount equal to a fixed percent, to be determined through rulemaking, of the total allowance amount deducted on Forms MMS–2014 during the year plus an amount calculated as equal to late payment interest from the date the actual cost form was due until the date the form is actually received.

MMS concludes that the recommendations of the study group will serve to improve its administration of oil and gas allowances, particularly as related to forms filing requirements and

associated sanctions. Therefore, MMS proposes to change its current regulatory requirements consistent with the substance of the alternative approach the study group presented.

V. Additional Changes by MMS

The majority of the changes reflected in this proposed rulemaking are contained in the study group report. Aditionally, MMS included several clarifications and additional changes based on MMS' experiences in administering allowances.

a. Failure To File Assessment

The study group did not specify in its alternative approach a fixed percentage assessment for payors' failure to timely file actual cost forms. For purposes of this rulemaking, MMS included a percentage rate of 10 percent. MMS specifically requests comments on this rate or an alternative rate. MMS also requests specific comments on whether or not an upper limit, or cap, should be established for such assessments, and how the upper limit should be constructed; e.g., absolute dollar amount per occurrence, etc.

b. Improper Netting Assessment

One of several changes involves the introduction of an assessment for the ''improper netting'' of allowances against royalty value when reporting royalties on the Form MMS–2014. ''Improper netting'' is a circumstance where two arm's-length transactions, one representing a sale and the other representing transportation and/or processing, supported by two separate invoices, are improperly reported on the payor's Form MMS–2014 as a one-line transaction. The proposed assessment is 20 percent, or twice the assessment (10 percent) that is proposed for failure to timely file required allowance forms. MMS believes that improper netting should carry an increased assessment because the practice represents, in effect, concealment of information with adverse impacts on MMS' efforts to monitor the accuracy of royalty payments. MMS specifically requests comments on the 20 percent rate proposed and whether an upper limit or cap should be established and how it should be constructed.

c. Unauthorized Allowance Assessment and Interest Requirement

Another change involves the introduction of an assessment and an interest requirement for certain circumstances where an oil or gas transportation or processing allowance in excess of regulatory thresholds is taken on Form MMS–2014 without the required prior MMS approval. Specifically, the current oil and gas regulations require prior MMS approval before a transportation or processing allowance that is in excess of 50 percent or 66⅔ percent, respectively, of the value of production may be taken on Form MMS–2014. An assessment of $10 per line is proposed for each reported allowance line taken in excess of the regulatory thresholds without obtaining the required prior approval from MMS.

Furthermore, an interest-based additional assessment is proposed for the period of time that the royalty payor has had the monetary benefit of the allowance in excess of the administrative threshold without having received MMS approval. MMS considered requiring the royalty payor to pay back an allowance taken in excess of the threshold but determined that an interest charge approach based on the amount in excess of the threshold would be a reasonable deterrent. MMS requests specific comment on the construction of this proposal and alternative approaches that should be considered.

d. Erroneous Reporting Assessment

MMS also proposes an assessment for reporting erroneous information on required allowance forms. MMS continues to experience significant additional workload caused by erroneously reported information on allowance forms. MMS seeks to establish an erroneous reporting assessment to encourage more accurate reporting. This proposed assessment authority currently exists for monthly production and royalty reports. An assessment has proven to be an effective tool to improve the accuracy of reported information.

e. Transportation Factors

MMS is considering the elimination of the current treatment of transportation factors in arm's-length contracts as reductions in value. Instead, MMS would treat such costs as transportation allowances. In the March 1988 valuation rulemaking, the concept of the transportation factor was adopted to reduce administrative burden for MMS and the industry. MMS has found through experience that transportation factors have created some confusion between MMS and the industry. Numerous instances have been encountered where disagreement existed between MMS and industry as to whether a transportation element of a sales arrangement was an allowance or a transportation factor under the regulations. In many of these cases, it was determined that the transportation cost should be treated as an allowance rather than a factor. In these cases, the payor had not filed required allowance forms and, consequently, was subject to substantial sanctions. Rather than proposing the elimination of transportation factors in the rulemaking, MMS is seeking specific comments on the extent to which royalty payors are now using transportation factors and what impacts would be caused if transportation factors were eliminated from the current regulations.

f. Technical Corrections

MMS proposes several technical corrections and clarifications including a lessee's option to use a depreciation or a return on depreciable capital investment basis in calculating actual allowance costs.

VI. Proposed Amendments

For the reasons discussed above, MMS proposes to amend its valuation regulations to change the allowance forms filing requirements for oil and gas. Furthermore, MMS is amending its valuation regulations to change the existing sanctions for not timely filing required allowance forms. MMS is also introducing new assessments for (1) failure to properly report allowances as separate lines on the Form MMS–2014, a practice commonly referred to as ''netting''; (2) noncompliance with regulatory requirements to obtain prior approval from MMS before taking oil and gas transportation allowances that exceed 50 percent of the value of the production, or gas processing allowances that exceed 66⅔ percent of the value of gas plant products; and (3) reporting erroneous information on required allowance forms. MMS also proposes several minor technical corrections and clarifications.

MMS is also proposing similar amendments to coal allowance regulations at 30 CFR 206 which are being published separately.

a. Oil Transportation Allowances

MMS proposes to amend § 206.105 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

> Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

MMS proposes to amend § 206.105(b)(1) by deleting the third and fourth sentences of paragraph (b)(1) that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the deleted sentences with the two following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4110 in accordance with paragraph (c)(2) of this section.

These changes remove the retroactive three-month limit for oil transportation allowances and incorporate the new reporting form. The Form MMS–4398 would be a new form that implements the recommendations of the study team report. A Notice of Proposed Information Collection will be published separately in the **Federal Register** for this form.

MMS proposes to further amend § 206.105(b)(1) by deleting from the sixth sentence the phrase ''* * * estimated or * * *'' The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.105(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4110 for the actual transportation allowance calculated. This form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to amend § 206.105(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4110 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2)(v), (vi), (vii), and (viii) would be redesignated (c)(2)(iv), (v), (vi), and (vii).

These changes would incorporate the new reporting form for oil transportation allowances, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to amend § 206.105(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS–4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS proposes to amend § 206.105(d) and revise the title to read:

b. Interest Charges and Assessments for Incorrect or Late Reports and Failure To Report

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.105(d) by deleting paragraphs (1), (2), and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4398 was due until the date that the form was received.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the coal oil instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommend that payors failing to timely file required forms would be assessed an amount equal to a fixed paercent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for assessments for incorrect or late reports and for failure to report. These changes implement the recommendation of the study group report on sanctions.

c. Gas Transportation Allowances

MMS proposes to amend § 206.157 by deleting the fourth and fifth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes adding in place of the deleted sentences the following sentences:

Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

These changes would remove the retroactive three-month limit for gas transportation and incorporate the new reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowance, Form MMS–4398. MMS further proposes to remove § 206.157(a)(5) as follows:

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

MMS proposes to amend § 206.157(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the following sentences:

Before any transportation deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive 3-month limit for gas transportation and incorporate the new reporting form, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, Form MMS–4398.

MMS proposes to further amend § 206.157(b)(1) by deleting from the sixth sentence the phrase ''* * * estimated or * * *''

The sixth sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

These changes would be technical corrections that improve the clarity of the language.

MMS proposes to amend § 206.157(c)(1) by deleting existing paragraphs (i), (ii), (iii), and (iv) and replacing them with new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraph (c)(1) (v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will be submitted within a reasonable period of time, as determined by MMS.

These changes incorporate the new reporting form for gas transportation allowances, Form MMS–4398.

MMS proposes to amend § 206.157(c)(2) by deleting existing paragraphs (i), (ii), (iii), and (iv), and adding new paragraphs that read:

(i) With the exception of those transportation allowances specified in paragraphs (c)(2) (iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4295

which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

Consistent with this amendment, paragraphs (c)(2) (v), (vi), (vii), and (viii) of § 206.157 are redesignated (c)(2) (iv), (v), and (vi), and (vii).

These changes would incorporate the new reporting form for gas transportation allowances, Form MMS–4398.

MMS proposes to amend § 206.157(c) by adding paragraph (5) stating:

A lessee is required to file a new Form MMS–4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

MMS proposes to amend § 206.157(d) and add the words ''* * * charges and * * *'' to the title that will read:

d. *Interest charges and assessments for incorrect or late reports and failure to report.*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to amend § 206.157(d) by deleting paragraphs (1), (2) and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4402.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4295.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4295 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.		Payment of interest on the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required forms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest and assessments for incorrect or late reports and for failure to report. These changes would implement recommendations of the study group report on sanctions.''

e. Gas Processing Allowances

MMS proposes to amend § 206.159 by deleting the third and fourth sentences of paragraph (a)(1)(i) that state:

Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than three months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

MMS proposes amending § 206.159(b)(1) by deleting the third and fourth sentences that state:

Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

MMS proposes replacing the two deleted sentences with the two following sentences:

Before any processing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent To Take Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109 in accordance with paragraph (c)(2) of this section.

These changes would remove the retroactive three-month limit for gas processing and incorporate the new reporting form, Form MMS–4398.

MMS proposes to further amend § 206.159(b)(1) by deleting from the seventh sentence the phrase ''* * * estimated or * * *'' The revised seventh sentence would read:

When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

These changes would be technical corrections and language clarification.

MMS proposes to amend § 206.159(c)(1) by deleting existing paragraphs (i), (ii), and (iii) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4109 for processing allowances within three months after the end of the reporting period, unless MMS approves a longer period.

MMS proposes to amend § 206.159(c)(2) by deleting existing paragraphs (i), (ii), (iii), (iv), and (vi) and replacing them with new paragraphs that read:

(i) With the exception of those processing allowances specified in paragraph (c)(2) (v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS–4109. The data must be provided within a reasonable period of time, as determined by MMS.

Consistent with this change, paragraphs (vii) and (viii) would be redesignated paragraphs (vi) and (vii).

These changes would incorporate the new reporting form for gas processing allowances, Form MMS–4398.

MMS proposes to amend § 206.159(c) by adding paragraph (5) to state:

A lessee is required to file a new Form MMS–4109 if adjustments are made to actual non-arm's-length processing allowances on Form MMS–2014.

MMS proposes to amend § 206.159(d) and add the words ''* * * charges and * * *'' to the title so it reads:

f. *Interest charges and assessments for incorrect or late reports and failure to report*

This change to the title would be necessary to reflect the changes in the content of the section.

MMS proposes to further amend § 206.159(d) by deleting paragraph (1), (2) and (3) and replacing them with the following schedule:

(d) *Interest charges and assessments for incorrect or late reports and failure to report* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance with 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a processing allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4109.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS–4109 was due until the date that the form was received.
Takes a processing allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a processing allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

These changes would adopt the study group's recommendations concerning the need for and equity of allowance payback and late-payment interest charges for failure to file allowance forms. The study group also determined that the current payback sanction is excessive. However, MMS' objective is to gather timely and accurate actual cost information to assess the legitimacy of allowance deductions. Accordingly, the study group recommended that payors failing to timely file required froms would be assessed an amount equal to a fixed percent of the total allowance amount deducted during the year plus an amount calculated as equal to late-payment interest from the date the actual cost was due until the date the form was actually received.

These changes would add specific language for interest charges and assessments for incorrect or late reports and for failure to report. These changes would implement the recommendations in the study group report for sanctions.

VII. Other Matters

Separate regulations concerning valuation of natural gas for royalty purposes are currently being developed for Federal leases and for Indian leases through two separate negotiated rulemaking committees. These committees are addressing both natural gas valuation and transportation and processing allowance issues.

The committee addressing natural gas valuation for Federal leases recommended in its March 1995 report that transportation and processing allowance forms no longer be required. This recommendation is one of numerous recommendations for broad changes to existing regulations governing the valuation of natural gas produced from Federal leases. The future rulemaking to be prepared considering the recommendations of the Federal negotiated rulemaking committee will include the proposal for eliminating the requirement for allowance forms. Thus the amendments being proposed today to change the oil and gas valuation regulations governing transportation and processing allowances may be impacted by the results of the future rulemaking. Similar impacts may occur for natural gas produced from Indian leases depending on the outcome of the negotiated rulemaking committee addressing the valuation of natural gas production from Indian lands.

MMS also would like comment on the effective date for the final rule. One option is to make any final rule effective as of January 1, 1995, the beginning of the current allowance year. Another option is to make the rule effective as of the date of publication of this proposed rule since royalty payors are on notice of the possible rule change on that date. Commenters should address this issue in their comments.

VIII. Procedural Matters

The Regulatory Flexibility Act

The Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). The proposed rule will streamline and improve existing regulatory reporting requirements related to allowances that are used to calculate royalty payments on oil and gas produced from Federal and Indian lands.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This document has been reviewed under Executive Order 12866 and is not a significant regulatory action.

Paperwork Reduction Act of 1980

The information collection requirements 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 1010–0022, 1010–0061, and 1010–0075. Form MMS–4398 has been submitted to OMB for approval.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 19, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart C—Federal and Indian Oil

2. Section 206.105 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (c)(1)(i) through (iv), (c)(2)(i) through (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v), (vi), (vii), and (viii) as paragraphs (c)(2)(iv), (v), (vi), and (vii), revising newly redesignated paragraphs (c)(2)(iv) through (vii) adding new paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.105 Determination of transportation allowances.

(a) * * *

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1) (ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. For the actual transportation allowance calculated for the reporting period, the lessee must file a Form MMS–4110, Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any transportation allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4110 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that the Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4110 for the actual transportation allowance calculated. This Form is due within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents must be submitted within a reasonable period of time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year. The lessee must file the Form MMS–4398 by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file a page one and all supporting schedules of Form MMS–4110 which show actual transportation costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4110 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.* MMS shall levy assessments and interest charges in accordance with the table below. MMS will determine interest rates in accordance wit 30 CFR 218.202.

If a lessee * * *	The assessment is * * *	Plus interest calculated * * *
Files an inaccurate or Late Form MMS–4398	$10 per allowance line required on Form MMS–4398.	
Deducts a transportation allowance on Form MMS–2014 without complying with requirements for actual cost reporting on Form MMS–4292.	An amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year.	From the date that Form MMS-4398 was due until the date that the form was received.
Takes a transportation allowance on Form MMS–2014 by improperly netting the allowance against the sales value of the product instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section.	An amount equal to 20 percent of the total allowance amount netted on Form MMS–2014.	From the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.
Erroneously reports a transportation allowance that results in an underpayment of royalties.	.....	On the amount of the underpayment.

* * * * *

Subpart D—Federal and Indian Gas

3. Section 206.157 is proposed to be amended by revising paragraphs (a)(1)(i), removing paragraph (a)(5), revising paragraphs (b)(1), (c)(1)(i) through (iv), (c)(2)(i), (ii), and (iii), removing paragraph (c)(2)(iv), redesignating paragraphs (c)(2)(v) through (viii) as paragraphs (c)(2)(iv) through (vii), revising newly designated paragraphs (c)(2) (iv) through (vii), adding paragraph (c)(5) and revising paragraph (d) to read as follows:

§ 206.157 Determination of transportation allowances.

(a) * * *

(1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products under that contract, except as provided in paragraphs (a)(1)(ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee will have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any transportation allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295, Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any transportation deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. For the actual transportation allowance incurred after the Form MMS–4398 reporting period, the lessee must file a Form MMS–4295 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual transportation allowance deduction.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those transportation allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will

continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4295 for transportation allowance actuals within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents will submitted within a reasonable period of time, as determined by MMS.

* * * * *

(2) * * *

(i) With the exception of those transportation allowances specified in paragraphs (c)(2)(iv), (vi) and (vii) of this section, the lessee must file a Form MMS–4398 for transportation allowances for each calendar year by the due date of the first sales month in which a transportation allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and will continue until the end of the calendar year.

(iii) After Form MMS–4398 reporting period, lessees must file a page one and all supporting schedules of Form MMS–4295 which show actual transportation costs within three months after the end of the reporting period, unless MMS approves a longer period.

(iv) Non-arm's-length contract or no-contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(v) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vi) MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use its FERC-approved or State regulatory agency-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4295 if adjustments are made to actual non-arm's-length transportation allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

* * * * *

4. Section 206.159 is proposed to be amended by revising paragraphs (a)(1)(i), (b)(1), (b)(2)(iv), (c)(1)(i), (ii), (iii), (c)(2)(i),(ii),(iii) and (iv), removing paragraph (c)(2)(vi), redesignating paragraphs (c)(2)(vii) and (viii) as paragraphs (c)(2)(vi) and (vii), revising newly redesignated paragraphs (c)(2)(vi) and (c)(2)(vii) adding paragraph (c)(5), and revising paragraphs (d) to read as follows:

§ 206.159 Determination of processing allowances.

(a) * * *

(1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1) (ii) and (iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any processing allowance deduction may be taken on Form MMS–2014, Report of Sales and Royalty Remittance, the lessee must file a Form MMS–4398, Notice of Intent To Take Oil And Gas Transportation and Processing Allowances, in accordance with paragraph (c)(1) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section.

* * * * *

(b) * * *

(1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any processing allowance deduction may be taken on Form MMS–2014, the lessee must file a Form MMS–4398, Notice of Intent to take Oil and Gas Transportation and Processing Allowances, in accordance with paragraph (c)(2) of this section. After the Form MMS–4398 reporting period, the lessee must file a Form MMS–4109 in accordance with paragraph (c)(2) of this section. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its actual processing allowance.

(2) * * *

(iv) A lessee may use either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

* * * * *

(c) * * *

(1) * * *

(i) With the exception of those processing allowances specified in paragraph (c)(1)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After Form MMS–4398 reporting period, the lessee must file page one of Form MMS–4109 for processing allowances within 3 months after the end of the reporting period, unless MMS approves a longer period.

* * * * *

(2) * * *

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v) and (vi) of this section, the lessee must file a Form MMS–4398 for processing allowances for each calendar year by the due date of the first sales month in which a processing allowance is reported on Form MMS–2014. A Form MMS–4398 received by the end of the month that

Form MMS–2014 is due will be considered timely received.

(ii) The Form MMS–4398 will be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and will continue until the end of the calendar year.

(iii) After the Form MMS–4398 reporting period, the lessee must file page one and all supporting schedules of Form MMS–4109 which show actual processing costs within 3 months after the end of the reporting period, unless MMS approves a longer period.

(iv) MMS may require that a lessee submit all data used by the lessee to prepare the actual costs submitted on its Form MMS–4109. The data must be provided within a reasonable period of time, as determined by MMS.

(v) * * *

(vi) MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(vii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

* * * * *

(5) A lessee is required to file a new Form MMS–4109 if adjustments are made to actual non-arm's-length processing allowances on Form MMS–2014.

(d) *Interest charges and assessments for incorrect or late reports and failure to report.*

(1) If a lessee fails to timely or accurately file a Form MMS–4398 for processing allowances, the lessee may be assessed $10 per allowance line required on Form MMS–4398.

(2) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section for Form MMS–4109 actual cost reporting, the lessee may be assessed an amount equal to 10 percent of the total allowance amount deducted on Forms MMS–2014 during the year plus interest calculated from the date the actual cost Form MMS–4109 was due until the date the form was received.

(3) If a lessee takes a processing allowance on its Form MMS–2014 by improperly netting the allowance against the value of the gas instead of reporting the allowance as a separate line item on Form MMS–2014 as required by paragraph (c)(4) of this section, the lessee may be assessed an amount equal to 20 percent of the total allowance amount netted on Form MMS–2014 plus interest calculated from the end of the month in which Form MMS–2014 containing the netted allowance was submitted to the date MMS discovers the netted amount.

(4) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(5) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

* * * * *

[FR Doc. 95–19295 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–011]

RIN 2115–AE47

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the vertical lift span drawbridge across the Gulf Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana. The proposed regulation would require that from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw would open on signal for passage of vessels. Presently, the draw is required to open on signal at all times. This action would relieve traffic congestion on the bridge during these periods, and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 6, 1995.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or may be delivered to Room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested parties are invited to participate in the proposed rulemaking by submitting written views, comments, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in this proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Background and Purpose

The Louisiana Department of Transportation and Development has requested the new regulation because vehicular traffic crossing the bridge during the proposed closure periods has increased dramatically during recent years and severe congestion occurs during peak traffic hours. The proposed regulation would allow for the uninterrupted flow of vehicular traffic, while still providing for the reasonable needs of navigation.

Discussion of Proposed Rules

The Louisiana State Route 1 vertical lift span bridge across the Guild Intracoastal Waterway, mile 35.6, at Larose, Lafourche Parish, Louisiana, has 35 feet vertical clearance above mean high water in the closed to navigation position and 73 feet vertical clearance above mean high water in the open to navigation position. The horizontal clearance is 125 feet. Navigation on the

waterway consists of tugs with tows, fishing vessels, sailing vessels, oil field work boats and recreational craft. Data provided by LDOTD show that from June 1993 through May 1994, the number of vessels that passed the bridge during the proposed closure period from 7 a.m. to 9 a.m. averaged 1.6 vessels per day. The number of vessels that passed the bridge during the proposed 4:30 p.m. to 6 p.m. closure averaged 1.4 vessels per day.

Data show that approximately 689 vehicles crossed the bridge during the proposed 7 a.m. to 9 a.m. closure period and approximately 1247 vehicles crossed the bridge during the proposed 4:30 p.m. to 6 p.m. closure period.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Since the proposed rule also considers the needs of local commercial fishing vessels, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.451 paragraphs (c) through (f) are redesignated (d) through (g) and a new paragraph (c) is added to read as follows:

§ 117.451 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the SR1 bridge, mile 35.6, at Larose, shall open on signal; except that, from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

* * * * *

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19348 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI53–02–7129; FRL–5273–4]

Public Hearing on the Proposed Redesignation of the Forest County Potawatomi Community to a PSD Class I Area; State of Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1995 USEPA proposed to approve a request from the Forest County Potawatomi Community to redesignate portions of its reservation lands to Class I for Prevention of Significant Deterioration (PSD) purposes (60 FR 33779). In this proposal, USEPA established a public comment period and scheduled a public hearing. Notice is hereby given that USEPA is postponing the public hearing. The hearing was to be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin at 2:00 pm CDT on August 2, 1995. USEPA is extending the public comment period indefinitely. The original public comment period was intended to close on September 5, 1995.

The hearing is postponed because the Governors of the States of Wisconsin and Michigan have requested ''dispute resolution''. Under Section 164(e) of the Clean Air Act, dispute resolution may be requested if a governor disagrees with a proposed redesignation. The Governors' request means that USEPA will enter into negotiations to try to resolve the differences concerning the proposed redesignation between the Forest County Potawatomi Community and the States of Wisconsin and Michigan. If mediation is unsuccessful, USEPA will make a final decision.

After the dispute resolution process concludes, one or more public hearings will be rescheduled, and USEPA will set a new deadline for submittal of public comments. The dates and location(s) of these will be provided in a future **Federal Register** document.

DATES: The public comment period is extended until further notice.

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

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, USEPA Region 5 (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 27, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–19401 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5273–9]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Nevada Division of Environmental Protection (''NDEP'' or ''State'') for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 6, 1995.

ADDRESSES: Comments should be addressed to Celia Bloomfield, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of NDEP's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone: 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''Act'')), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (''part 70''). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

This proposed interim approval applies to the NDEP title V operating permits program and sources under NDEP's jurisdiction. NDEP has jurisdiction over all sources in the State outside of Washoe County, Clark County and tribal lands, as well as all fossil fuel fired steam generating power plants inside Washoe and Clark Counties. Washoe County District Health Department received interim approval on January 5, 1995 (60 FR 1741), and interim approval was proposed for Clark County Health District on March 14, 1995 (60 FR 13683).

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval and could not be renewed. During the interim approval period, NDEP would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program in Nevada. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following final interim approval, if NDEP failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If NDEP then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that NDEP had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In any case, if, six months after application of the first sanction, NDEP still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove NDEP's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date NDEP had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In all cases, if, six months after EPA applied the first sanction, NDEP had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to NDEP—s program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for NDEP upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of NDEP's title V operating permits program that must be corrected to meet the minimum requirements part 70. The full program submittal; the Technical Support Document (''TSD''), which contains a detailed analysis of the submittal; and

other relevant materials are available for inspection as part of the public docket (NV–DEP–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

NDEP's initial title V program was submitted on November 22, 1993. The submittal was found to be complete on January 13, 1994. In a letter dated July 20, 1994, NDEP submitted to EPA revised title V implementing regulations. The revised regulations constituted a material change to the State's title V program, and hence, extended EPA's review period pursuant to section 70.4(e)(2). On February 8, 1995, EPA received an amended title V submittal from NDEP (''amended submittal'') and a letter from the Governor's designee requesting that the amended submittal be reviewed and acted on in lieu of the initial November 22, 1993 submittal. EPA agreed, sent a second program completeness letter to NDEP on February 27, 1995, and is taking action on the February 8, 1995 amended submittal in this notice.

NDEP's February 8, 1995 submission contains a complete program description, enabling legislation, State implementing and supporting regulations, and all other program documentation required by section 70.4. The amended submittal also contains a list of the changes made from the November 22, 1993 version, such as a revised fee demonstration and the removal of enacted bills that have since been codified into the Nevada Revised Statutes (''NRS''). The February 8, 1995 submittal does not, however, include an updated Attorney General's opinion; it includes the original version signed November 15, 1993. Consequently, the citations for several rules and legislation are expressed in a precodification format. EPA is therefore relying on elements of the initial submittal as supporting documentation for this rulemaking. The TSD, located in the docket, specifically identifies when EPA's evaluation of the program relies on supporting documentation contained in the initial program submittal.

2. Title V Operating Permit Regulations and Program Implementation

NDEP relied on additions and amendments to its existing air quality regulations (NAC 445.430–445.846) to satisfy the requirements of part 70 and title V. The first ''title V'' revisions to NAC 445.430–846 were adopted on November 3, 1993. On March 3, 1994, the Nevada State Environmental Commission made additional changes to the title V portions of NAC 445.430–846. The February 8, 1995 amended submittal contains the March 3, 1994 version of NAC 445.430–445.846; a May 26, 1994 amendment to NAC 445.7135 (fees); a February 16, 1995 amendment to NAC 445B.221 (part 72, acid rain); and a February 16, 1995 amendment to NAC 445B.327 (fees).[1] In a letter sent to EPA dated July 12, 1995, NDEP identified the provisions in NAC 445.430–846 relevant to title V implementation and requested that EPA take action only on those provisions identified. Therefore, in this proposed interim approval notice, EPA is acting on the following provisions of Nevada State law: NAC 445.430, 445.432, 445.433, 445.4343, 445.4346, 445.438, 445.4395, 445.4415, 445.4425, 445.4615, 445.4625, 445.4635, 445.4645, 445.477, 445.4915, 445.4955, 445.500, 445.5008, 445.504, 445.506, 445.5095, 445.5105, 445.521, 445.5275, 445.5305, 445.5405, 445.5431, 445.548, 445.550, 445.559, 445.5695, 445.571, 445.5855, 445.5905, 445.5915, 445.5925, 445.5935, 445.613, 445.628, 445.630, 445.649, 445.662, 445.664, 445.696, 445.697, 445.699, 445.704, 445.7042, 445.7044, 445.705, 445.7052, 445.7054, 445.7056, 445.7058, 445.706, 445.707, 445.7073, 445.7075, 445.7077, 445.7112, 445.7114, 445.7122, 445.7124, 445.7126, 445.7128, 445.713, 445.7131, 445.7133, 445.7135, 445.7145, 445.7155, 445.717, 445.7191, 445.7193, 445.7195, 445B.221, 445B.327. Provisions not included in the July 12, 1995 letter from NDEP may still be considered supporting documentation for the State's title V operating permit program.

NDEP's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Applicability

NDEP stated in its amended submittal that it will take advantage of EPA's March 8, 1994 policy regarding fugitive emissions. NDEP will not require fugitives to be considered in determining the major source status of sources subject to post-1980 New Source Performance Standards (''NSPS'') and National Emissions Standards for Hazardous Air Pollutants (''NESHAP''). In accordance with that policy, NDEP's title V program is eligible only for interim approval. (See March 8, 1994 memorandum entitled, ''Consideration of Fugitive Emissions in Major Source Determinations,'' signed by Lydia Wegman.)

The program description, submitted as part of NDEP's title V program, indicates the State's intention to permit only major sources, phase II acid rain sources, and solid waste incinerators subject to section 129(e) of the Act (program submittal, Section VI, pp.2–4). The program description further states that NDEP's title V program does not cover nonmajor sources (''area sources'') subject to a section 111 or 112 standard or in a category designated by the Administrator. While the coverage is not consistent with section 70.3(b)(2), which states that section 111 and 112 standards promulgated after July 21, 1992 will specify whether a nonmajor source must obtain a title V permit, it is acceptable for the following two reasons: 1) EPA is deferring title V permit requirements for nonmajor sources subject to recently promulgated MACT standards (See May 16, 1995 guidance document entitled, ''Title V Permitting for Nonmajor Sources in Recent Section 112 Maximum Achievable Control Technology (MACT) Standards,'' by John Seitz, Director of the Office of Air Quality Planning and Standards); and 2) NDEP committed to expeditiously revise its title V program to reflect any action by EPA to require title V permitting for nonmajor sources (program submittal, section VI, pp.3–4).

Although NDEP's program description clearly indicates NDEP's intent to exclude nonmajor sources from its title V (i.e., Class I) permitting requirements, NDEP's regulations require any new source subject to a section 111 or section 112 standard or any new source in a category of sources designated by the Administrator of EPA to apply for a Class I–B permit (NAC 445.7044.3 and .4). In other words, by omitting the word ''major'' when specifying new source applicability, the regulations could be interpreted to require certain nonmajor sources to obtain title V permits. EPA views this applicability distinction as an inconsistency in the State's program. Prior to final rulemaking, EPA requests that NDEP provide a letter to resolve this apparent inconsistency and

[1] The citation format varies because NDEP revised its citation system after most of the implementing regulations were adopted and submitted to EPA. A citation translation key can be found in the docket at EPA Region IX.

describe under which reading the State desires EPA to act on its program.

b. Integrated Permit

NDEP's program combines the requirements for operating permits and construction permits (''integrated program''). All title V sources are identified as Class I sources and must obtain Class I operating permits that meet the requirements of title V and part 70. Sources subject to State requirements only (i.e., not subject to the requirements of title V or part 70) are identified as Class II sources and are outside the scope of this proposed approval. Existing Class I sources will be subject to Class I–A requirements, and new or modified Class I sources will be subject to Class I–B requirements.

The regulations that implement the integrated program are contained in the Nevada Administrative Code (''NAC'') sections 445.430–445.846. This interim approval addresses only those elements that pertain to operating permit program requirements for title V sources as identified above. The proposed approval is not being made under EPA's title I authority, and hence, is not amending Nevada's new source review program.

c. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

NDEP's list of insignificant activities is set out in NAC 445.705.3 and referred to as permit ''exemptions.'' Despite being called ''exemptions,'' NAC 445.705.3 ensures that potential emissions from these activities will be included in all Class I applicability determinations. In addition, NAC 445.7054.2(b) requires Class I permit applications to describe all points of emissions and all activities ''in sufficient detail to establish the basis for the applicability of standards and fees,'' thus ensuring that the application will not omit information needed to determine whether or how a requirement of the Act applies at a source. EPA interprets the terms ''all points of emissions'' and ''all activities which may generate emissions of [the] air pollutants'' in NAC 445.7054.2(b) to include those from NDEP's list of insignificant activities at NAC 445.705.3.

NDEP's insignificant activities are defined by source or activity type in combination with a given size or rate. Activities without a specified size or rate cut-off qualify as insignificant if they are below the major source threshold. This high cut-off, when viewed in conjunction with the listed activities like ''agricultural land use'' and ''equipment or contrivances used exclusively for the processing of food'' would almost certainly result in necessary information being left off of the permit application. In order to be fully approvable, NDEP must provide additional criteria that will limit insignificant activities to activities that are unnecessary for evaluating the applicability of requirements at a facility.

For other State and district programs, EPA has proposed to accept, as sufficient criteria for full approval, emission levels defining insignificant activities of two tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants (''HAP'') and other toxics (40 CFR section 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Nevada. This request for comment is not intended to restrict the ability of other States and districts to propose, and EPA to approve, different emission levels if the state or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

d. Variances

NDEP has authority under State law to issue a variance from State requirements. Sections 445.506, 445.511, 445.516, and 445.521 of the NRS allow the State to grant relief from enforcement action for permit violations. EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State law.

The EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

e. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and NDEP has not defined ''prompt'' in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the

semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (''CPI''), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum,'' (40 CFR 70.9(b)(2)(i)).

NDEP elected to collect fees below the presumptive minimum and to submit a detailed fee demonstration of fee adequacy. Nevada's fee regulation, NAC 445B.327, was amended on February 16, 1995 to cap fees at the 1995 level, thus charging $3.36 per ton of emissions of regulated pollutants. In addition, facilities must pay annual maintenance fees per permitted source. Given the amount of fees collected from title V sources for fiscal year 1995, NDEP estimated the total annual fee revenue from title V sources to be about $599,893 during the first three years of the program.

In order to determine whether the title V fees would be adequate to cover the direct and indirect costs of the program, NDEP did a detailed workload analysis which incorporated all the activities involved in title V implementation. Based on this analysis, NDEP determined that four additional staff would have to be hired. Incorporating the cost of the four staff persons, a phased schedule for permitting sources, and other direct and indirect costs, NDEP estimated the total title V program costs to be approximately $457,079 each year during the first three years of the program.

NDEP's fee analysis demonstrates that title V fees are expected to be sufficient to cover the costs of the title V program. In order to ensure continued fee adequacy, NDEP will keep an accounting system that details expenditures associated with direct title V activities and ensures that the State's air quality management fund has adequate fee revenue to cover indirect program costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

NDEP has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Nevada's enabling legislation and in regulatory provisions defining federal ''applicable requirements'' and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. NDEP's submittal also contains a commitment to implement and enforce section 112 requirements and to adopt additional regulations as needed to issue permits that implement and enforce the requirements of section 112. The EPA has determined that the legal authority and commitments are sufficient to allow NDEP to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Authority for Title IV Implementation

NDEP incorporated by reference part 72, the federal acid rain permitting regulations, on February 16, 1995. The incorporation by reference was codified in NAC 445B.221 and submitted to EPA on February 27, 1995 to be added to the State's title V operating permit program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is proposing to grant interim approval to the operating permits program submitted by the Nevada Division of Environmental Protection, Bureau of Air Quality on November 22, 1993 and revised by the amended submittal made on February 8, 1995. If promulgated, NDEP must make the following changes to receive full approval:

(1) Revise NAC 445.7054.2(h)(2) to clearly require that compliance certifications submitted as part of the permit applications include the compliance status of all applicable requirements and the methods used for determining compliance with all applicable requirements. As NDEP's rule is currently written, a compliance certification is part of the source's compliance plan, and the elements of the compliance plan are required to address all applicable requirements (NAC 445.7054.2(h)). However, the compliance certification provision, within the compliance plan framework, can be read, inappropriately, to narrow the scope of certifications to those applicable requirements that become effective during the term of the permit. Nonetheless, because NAC 445.7054.2(h)(1) requires a narrative description of the source's compliance status with respect to all applicable requirements, EPA believes part 70's compliance certification requirements will be substantially met for the interim approval period. (section 70.5(c)(9))

(2) Revise the definition of ''regulated air pollutant'' to include, in addition to those pollutants listed under NAC 445.5905: 1) any pollutant subject to requirements established under section 112 of the Act, including sections 112(g), (j), and (r); and 2) any Class I or Class II substance subject to a standard established by title VI of the Act. (Section 70.2, definition of ''regulated air pollutant'')

(3) NDEP's rule does not contain a title V permit application trigger for existing sources that become subject to the program after the program's effective date. NAC 445.7052.1 must be revised to include an application requirement for such sources. (section 70.5(a)(1)(i))

(4) NDEP's permit shield provisions in NAC 445.7114.1(j) are not fully consistent with part 70 and must be revised as follows: 1) clearly indicate that NAC 445.7114.1(j) provides for permit shields; 2) require the permit to expressly state that a permit shield exists or the permit is presumed not to provide such a shield (section 70.6(f)(2)); and 3) add a statement that the permit shield may not be extended to minor permit modifications (section 70.7(e)(2)(vi)).

(5) Add emissions trading provisions consistent with section 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

(6) A schedule of compliance contained in a title V permit must be consistent with that required in the permit application (section 70.6(c)(3)). While NDEP application provisions require all the necessary elements of a schedule of compliance, the permit requirements in NAC 445.7114.1(h) must be revised either by referencing the application requirements in NAC 445.7054.2(h)(3) or by adding that the schedule of compliance will contain a

schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance and that the schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. In addition, the schedule of compliance must address requirements that become applicable during the term of the permit pursuant to section 70.5(c)(8)(iii)(B).

(7) The progress report requirement in NAC 445.7114.1(h)(1) is vague and must be revised to more clearly meet the requirements of section 70.6(c)(4). EPA suggests adding the following language to NAC 445.7114.1(h)(1): *''Requirements for [s]emiannual progress reports with dates for achieving milestones and dates when such milestones were achieved.''*

(8) NDEP indicated in its program description that Class I permits may be issued to portable sources (program submittal, Section II, p.8). In order to satisfy the part 70 requirements for temporary sources, NDEP must add a requirement that the owner or operator of a Class I ''portable source'' (as defined in NAC 445.5695) notify NDEP at least 10 days in advance of each change in location. (section 70.6(e)(2))

(9) Revise NAC 445.7114.1(g) to ensure that any trade under a federally enforceable emissions cap is preceded by a written notification to NDEP at least 7 days in advance of the trade. The notification must specify when the change will occur and include a description of the change in emissions that will result and how the increases and decreases will comply with the terms and conditions of the permit. (sections 70.4(b)(12) and 70.4(b)(12)(iii)(A))

(10) Remove the phrase ''Except as otherwise provided in subsection 2'' from NAC 445.705.1, as it inaccurately suggests that major sources subject to either the New Source Performance Standard for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants for asbestos demolition are not required to obtain title V operating permits.

(11) Provide additional defining criteria that will ensure that NDEP's insignificant activities (i.e., activities exempt from part 70 permitting) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, NDEP may restrict the exemptions to activities that are not likely to be subject to an applicable requirement or emit less than State-established emission levels. NDEP should demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, NDEP is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of NDEP's part 70 program that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within NDEP's jurisdiction. The approved program would not apply to any part 70 sources over which an Indian tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), NDEP must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

Implementation of section 112(g) during this transition period requires states to have an available mechanism for establishing federally enforceable HAP emission limits or other conditions from the effective date of the section 112(g) rule until they can adopt rules specifically designed to implement section 112(g). NDEP requires any source that constructs or modifies to obtain a permit or permit revision prior to commencing construction. As noted earlier, NDEP's program is an integrated program; that is, the permit that is issued to a new or modifying source prior to its construction will contain all preconstruction review requirements and all operating requirements. Integrated preconstruction/operating permits issued to major sources must meet all procedural requirements of part 70, including public and EPA review, and are therefore part 70 permits. In Nevada, sources subject to section 112(g) (new or modified major sources of hazardous air pollutants) will be issued a part 70 permit (i.e., a Class I permit) prior to construction. The State has authority to establish a MACT requirement for the source pursuant to NAC 445.7191 and 445.7193. The source will then have federally enforceable limits on HAP emissions in compliance with section 112(g). Once EPA promulgates a final section 112(g) rule, NDEP will act expeditiously to revise its hazardous air pollutant regulations to be consistent with the section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated.

In a letter dated July 12, 1995, NDEP requested that EPA approve, in conjunction with the title V approval action, NDEP's program for receiving delegation of unchanged section 112 standards as they apply to nonmajor sources. Therefore, today's proposed approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for delegation extends to non-part 70 sources as well as part 70 sources. (See July 12, 1995 letter from Jolaine Johnson, Chief, Bureau of Air Quality, NDEP to Debbie Jordan, Chief,

Operating Permits Section, EPA Region IX.)

NDEP has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards (existing and future) by incorporating section 112 standards into the Nevada Administrative Code by reference to the federal regulations. The details of this delegation mechanism will be set forth in an Implementation Agreement between NDEP and EPA.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of NDEP's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by September 6, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 28, 1995.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 95–19402 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 433, 438 and 464

[FRL–5271–9]

RIN 2040–AB79

Comment Period Extension on Proposed Rulemaking for the Metal Products and Machinery Phase I Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Notice of comment period extension.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension of the comment period for the proposed regulations. The proposed pretreatment standards and effluent limitations guidelines were published in the **Federal Register** on May 30, 1995 (60 FR 28210).

DATES: The original date for submission of written comments on the proposed regulations was August 28, 1995. This date is being changed to October 27, 1995.

ADDRESSES: Comments should be submitted to Mr. Steven Geil at U.S. Environmental Protection Agency by mail at U.S. EPA, Engineering and Analysis Division (Mail Code 4303), Office of Science and Technology, 401 M. Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Geil, (202) 260–9817.

SUPPLEMENTARY INFORMATION: The extended comment period for the proposed rulemaking now ends on October 27, 1995. All written comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be incorporated into the Record and considered before promulgation of the final rule.

Dated: July 28, 1995.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 95–19252 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is scheduling a public meeting to discuss proof of commitment to employ aboard U.S. merchant vessels. The purpose of the meeting is to receive feedback on how the elimination of the letter of commitment is affecting the maritime industry. Until June 1994, a letter of commitment (proof of commitment) for employment aboard a U.S. merchant vessel was required for an applicant to receive an original, entry level merchant mariner's document to ensure that the applicant intended to work in the maritime industry. With no other criteria to obtain a merchant mariner's document, the Coast Guard determined in 1937 that the letter of commitment was necessary to deter persons from obtaining the card for identification purposes only. In recent years the Coast Guard recognized that the letter of commitment placed the mariner in the awkward situation of being told by a company or union that they could not work without a merchant mariner's document, sending the applicant to the Coast Guard for the document, and the Coast Guard could not issue the document without the company or union issuing a letter of commitment. With the advent of user fees and chemical testing requirements to obtain a merchant mariner's document, the

Coast Guard determined that the letter of commitment was no longer a valid requirement.

DATES: The meeting will be held September 5, 1995 from 10 a.m. to 12 p.m. Written material must be received not later than September 30, 1995.

ADDRESSES: The meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. Written comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at room 3406, Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Marine Personnel Division (NMC–4), National Maritime Center, 4200 Wilson Blvd., Suite 510, Arlington, VA 22203–1804, telephone (703) 235–1951.

SUPPLEMENTARY INFORMATION: On December 6, 1993, the Coast Guard published a Notice of Proposed Rulemaking entitled ''Proof of Commitment to Employ Aboard U.S. Merchant Vessels'' in the **Federal Register** (58 FR 64278), to amend the regulations covering applicants for merchant mariner's documents to eliminate the requirement that the applicant provide proof of a commitment of employment as a member of a crew of a United States merchant vessel. The comment period ended on February 4, 1994. The Coast Guard received four favorable comments and no unfavorable comments. It published a final rule on June 8, 1994, (59 FR 28791), which became effective on July 5, 1994. The Coast Guard is interested in how the elimination of the requirement for a letter of commitment to employ is affecting the maritime industry, shipping companies and mariners. To determine the impact, the Coast Guard invites comments on the positive or negative effects of the elimination of a letter of commitment. The Coast Guard will evaluate all comments to determine if the regulation will remain in effect or if it is appropriate to reinstitute the requirement for a letter of commitment to employ. Maritime unions, shipping companies, and mariners or mariners' representatives are encouraged to attend the public meeting.

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Dated: July 28, 1995.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19349 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–127, RM–8676]

Radio Broadcasting Services; Oro Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Rita Bonilla, seeking the allotment of Channel 277A to Oro Valley, Arizona, as that community's second local FM service. Coordinates for this proposal are 32–26–45 and 111–02–54. Oro Valley is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before September 25, 1995, and reply comments on or before October 10, 1995.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Esq., Taylor, Thiemann & Aitken, 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95–127, adopted July 27, 1995, and released August 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–19364 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 216, 217, 246, and 252

[DFARS Case 95–D702]

Defense Federal Acquisition Regulation Supplement; Contract Award (Proposed)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (''the Act''). The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement concerning contractor qualifications, special contracting methods, and quality assurance as a result of changes made to Title 10 U.S.C. by Sections 1505, 2401, and 2402 of the Act.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 6, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D702 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa D.Rider, DFARS FASTA Implementation Secretariat, at (703) 614–1634. Please cite DFARS case 95–D702.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355 (''the Act''), dated October 13, 1994, provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

DFARS Case 95–D702 addresses five defense-unique sections of the Act: Section 1505, Restrictions on Undefinitized Contractual Actions; Section 2401, Clarification of Provision Relating to Quality Control of Certain Spare Parts; Section 2402, Contractor Guarantees Regarding Weapons Systems; Section 3061, Regulations on Procurement, Production, Warehousing, and Supply Distribution Functions; and Section 10004, Data Collection Through the Federal Procurement Data System. A discussion of the changes associated with each section follows:

Section 1505, Restrictions on Undefinitized Contractual Actions—Subsection 1505(a) of the Act requires that the limitation on expenditures be changed to reflect limitations on obligations, for underfinitized contractual actions (UCAs). This was done because the Government cannot control when funds are expended by the contractor but can control when funds are obligated on a contract. Subsection 1505(b) of the Act allows the head of agency to waive the UCA restrictions, if necessary to support a contingency operation. DFARS changes resulting from Subsections 1505 (a) and (b) were published as Item IX of Defense Acquisition Circular 91–7 (60 FR 29491) on June 5, 1995. Therefore, this proposed rule contains no DFARS changes to implement Subsections 1505 (a) and (b), Subsection 1505(c) of the Act exempts contracts within the simplified acquisition threshold from UCA restrictions. This proposed rule implements Subsection 1505(c) at DFARS 217.7402(b). The proposed rule also changes other portions of DFARS Parts 216 and 217 to consolidate requirements involving UCAs. A new DFARS clause, modeled on the clause at FAR 52.216–25, Contract Definitization, is proposed to provide a standard clause for DoD use in all UCAs.

Section 2401, Clarification of Provision Relating to Qualify Control of Certain Spare Parts—This Section of the Act requires that the DoD qualification requirements that were used to qualify an original production part be used on all subsequent acquisitions of that part unless the Secretary determines in writing that other sufficiently similar requirements exist that should be used instead, or that the original requirements were unnecessary. The proposed rule amends DFARS Subpart 209.2, Qualification Requirements, to add this requirement, but allows the requiring activity to make the determination. This is consistent with the approval levels cited in other on-going FAR cases on specifications and standards and qualification requirements (QPL/QSL) and supports, in general, the empowerment of lower echelons of the acquisition workforce, when and where appropriate (in this case the requiring activity).

Section 2402, Contractor Guarantees Regarding Weapons Systems—This Section of the Act requires that acquisition regulations be modified to include guidelines for negotiating reasonable, cost effective contractor guarantees,procedures for administering such guarantees, and guidelines for determining when waivers of requirements for warranties are appropriate. The proposed rule adds language at DFARS 246.770–2(b) that discusses the logical process of constructing a rational warranty for a weapon system. The coverage provides the reader with a good source of detailed information—the DSMC Warranty Guidebook. The proposed rule balances the need for specific guidance with the need to minimize DFARS coverage. This Section of the Act also eliminated Congressional reporting requirements for other than major weapon systems. Therefore, minor changes have been made at DFARS 246.770–8 to delete language pertaining to reporting requirements. The title of the Under Secretary of Defense (Acquisition and Technology) has been corrected at DFARS 246.770–8(a).

Section 3061, Regulations on Procurement, Production, Warehousing, and Supply Distribution Functions—This section of the Act amends 10 U.S.C. 2202 to vest the Secretary of Defense with the authority to prescribe regulations governing the performance within DoD of procurement, production, warehousing, and supply distribution, and related functions. Given that existing FAR coverage of Subpart 1.3 already vests the Secretary of Defense with this authority, especially when one considers that 5 U.S.C. allows agency heads, such as the Secretary of Defense, to structure the internal administrative procedures of his/her agency to support, among other things, the procurement process, no DFARS change has been made to implement this Section of the Act.

Section 10004, Data Collection Through the Federal Procurement Data System. No changes are proposed to implement this Section of the Act in the DFARS. FAR changes associated with this Section were included in FAR Case 94–701, which was published as a proposed rule on January 9, 1995 (60 FR 2472).

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because: the new section at DFARS 209.206–70 pertains to internal Government procedures for determining qualification requirements; the revisions to DFARS Parts 216 and 217 and the new contract clause merely consolidate and standardize existing requirements pertaining to underfinitized contract actions; and the revisions to DFARS 246.770 pertain to internal Government considerations regarding to use of warranties. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D702 in correspondence.

C. The Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule will not impose any additional reporting or record keeping requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 216, 217, 246, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR 209, 216, 217, 246, and 252 are proposed to be amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR Parts 209, 216, 217, 246, and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 209.206–70 is added to read as follows:

209.206–70 Quality control of critical aircraft and ship spare parts.

In accordance with 10 U.S.C. 2383, a contractor supplying any spare or repair part, that is critical to the operation of an aircraft or ship, is required to provide a part that meets all appropriate qualification and quality requirements as may be specified in the solicitation and made available to prospective offerors. The qualification requirements shall be identical to the DoD qualification requirements that were used to qualify the original production part, unless it is determined by the head of the requiring activity, in writing, that—

(a) There are other requirements sufficiently similar to those requirements that should be used instead; or

(b) Any or all such requirements are unnecessary.

PART 216—TYPES OF CONTRACTS

3. Section 216.603–4 is revised to read as follows:

216.603–4 Contract clauses.

(b)(2) See 217.7405(a) for additional guidance regarding use of the clause at FAR 52.216–24, Limitation of Government Liability.

(3) Use the clause at 252.217–XXXX, Contract Definitization, in accordance with its prescription at 217.7405(b), instead of the clause at FAR 52.216–25, Contract Definitization.

4. Section 216.703 is amended by revising paragraph (c) to read as follows:

216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed three years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to two years. No single extension shall exceed one year. See subpart 217.74 for additional limitations on the use of undefinitized orders under basic ordering agreements.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

5. Section 217.202 is amended by adding paragraph (3) to read as follows:

217.202 Use of options.

* * * * *

(3) See subpart 217.74 for limitations on the use of undefinitized options.

6. Section 217.7402 is amended by revising paragraph (b) to read as follows:

217.7402 Exceptions.

* * * * *

(b) Purchases at or below the simplified acquisition threshold;

* * * * *

217.7404–3 [Amended]

7. Section 217.7404–3 is amended in the introductory text of paragraph (a) by revising the word ''earliest'' to read ''earlier.''

8. Section 217.7405 is revised to read as follows:

§ 217.7405 Contract clauses.

(a) Use the clause at FAR 52.216–24, Limitation of Government Liability, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs.

(b) Use the clause at DFARS 252.217–XXXX, Contract Definitization, in all UCAs, solicitations associated with UCAs, basic ordering agreements, indefinite delivery contracts, and any other type of contract providing for the use of UCAs. Insert the applicable information in paragraphs (a), (b), and (d) of the clause. If, at the time of entering into the UCA, the contracting officer knows that the definitive contract action will be based on adequate price competition or otherwise will meet the criteria of FAR 15.804–3 for not requiring submission of cost or pricing data, the words ''and cost or pricing data'' may be deleted from paragraph (a) of the clause.

PART 246—QUALITY ASSURANCE

9. Section 246.770–2 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, by adding a new paragraph (b), and by revising newly designated paragraph (c) to read as follows:

246.770–2 Policy.

* * * * *

(b) Contracting officers and program managers shall consider the following when developing and negotiating weapon system warranty provisions:

(1) Warranties may not be appropriate in all situations, and a waiver should be sought if a warranty would not be cost-effective or would otherwise be inconsistent with the national defense. In drafting warranty provisions, the drafters must ensure they understand the planned operational, maintenance, and supply concepts of the weapon system to be fielded, and must structure a warranty that matches those concepts. A warranty plan should be prepared in consonance with development of the warranty provisions early in the weapon system's life cycle. The plan should contain program warranty strategy, terms of the warranty, administration and enforcement requirements, and should be coordinated with the user and support activities.

(2) A cost/benefit analysis must be accomplished in support of each warranty (see 246.770–7). The cost/benefit analysis compares all costs associated with the warranty to the expected benefits. An estimate shall be made of the likelihood of defects and the estimated cost of correcting such defects. Also, if substantive changes are required to the planned operational, maintenance, or supply concepts, any increased costs should be weighed against the expected benefits in deciding whether a warranty is cost-effective.

(3) The Warranty Guidebook prepared by the Defense Systems Management College, Fort Belvoir, VA 22060–5426, is a valuable reference that can assist in the development, negotiation, and administration of an effective weapon system warranty.

(c) Contracting officers may require warranties that provide greater coverage and remedies than specified in paragraph (a) of this subsection.

10. Section 246.770–8 is amended by removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2), and revising the introductory texts of paragraphs (a), (c), and (c)(2) to read as follows:

246.770–8 Waiver and notification procedures.

(a) The Secretary of Defense has delegated waiver authority within the limits specified in 10 U.S.C. 2403. The waiving authority for the defense agencies is the Under Secretary of Defense (Acquisition and Technology). Submit defense agency waiver requests to the Director, Defense Procurement, for processing. The waiving authority

for the military department is the Secretary of the department with authority to redelegate no lower than an Assistant Secretary. The waiving authority may waive one or more of the weapons system warranties required by 246.770–2 if—

* * * * *

(c) Departments and agencies shall issue procedures for processing waivers and notifications to Congress.

* * * * *

(2) Notifications shall include—

* * * * *

PART 252—CONTRACT CLAUSES

252.217–7027 [Removed]

11. Section 252.217–7027 is removed.

12. Section 252.217–XXXX is added to read as follows:

252.217–XXXX Contract Definitization.

As prescribed in 217.7405(b), use the following clause:

Contract Definitization (XXX XXXX)

(a) A (*insert specific type of contract action*) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a (*insert type of proposal; e.g., fixed-priced or cost-and-fee*) proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract action is as follows (*insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data*):

_____

_____

_____

_____

(c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with subpart 15.8 and part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this clause, all clauses, terms, and conditions including included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.

(d) The definitive contract resulting from this undefinitized contract action will include a negotiated (*insert ''cost/price ceiling '' or ''firm-fixed price''*) in no event to exceed (*insert the not-to-exceed amount*).

(End of Clause)

[FR Doc. 95–19318 Filed 8–4–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Eagle Lake Rainbow Trout and Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces the 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition did not present substantial information indicating that the petitioned actions may be warranted.

DATES: The finding announced in this document was made on July 25, 1995.

ADDRESSES: Information, data, comments, or questions concerning this finding should be submitted to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, California 95825–1846. The petition, petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Windham, staff biologist, at the above address or telephone 916–979–2725.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service also is required to commence a review of the status of the species.

The Service has made a 90-day finding on a petition to list the Eagle Lake rainbow trout (*Oncorhynchus mykiss aquilarum*). The petition, dated April 25, 1994, was submitted by John F. Bosta, of Susanville, California, and was received by the Service on April 28, 1994. The petition requested the Eagle Lake rainbow trout be listed as threatened or endangered, that critical habitat be designated, and that a recovery plan be developed. The petitioner provided some life history information for the Eagle Lake rainbow trout and material related to the fish passage problems, habitat degradation, and lack of natural reproduction. Recommendations for correcting habitat problems were included with the petition.

The Eagle Lake rainbow trout is a species of concern to the Service (November 15, 1994; 59 FR 58982). Such taxa are typically those for which some information indicates threats to the species exit but sufficient information on biological vulnerability and threats is not currently available indicating that listing as endangered or threatened is warranted.

Eagle Lake rainbow trout are endemic to Eagle Lake, Lassen County, California. Although they have been planted in numerous waters, no known self-sustaining populations of genetically pure Eagle Lake rainbow trout in waters exist outside of its native habitat. With the annual stocking of 200,000 Eagle Lake trout, the subspecies has been sustained almost entirely by California Department of Fish and Game's hatchery production since 1950. The petition and referenced literature

describe the lack of natural reproduction as the most serious concern for the long-term survival of Eagle Lake rainbow trout. Due to passage barriers and habitat degradation in Pine Creek (the only major tributary for spawning), no significant natural reproduction of Eagle Lake rainbow trout has occurred for over 40 years. Though efforts by the Forest Service to improve fish passage and riparian habitat may not be completed for 5 years, these efforts to restore natural spawning in Pine Creek are now underway.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14 (b)(2)(ii)]. The regulations require the Service to ''consider whether such petition * * * [p]rovides information regarding the status of the species over all or a significant portion of its range'' [50 CFR § 424.14 (b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to ''consider whether such petition * * * [i]s accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps'' [50 CFR § 424.14 (b)(2)(iv)].

Despite the limited distribution of the Eagle Lake trout, the petition included insufficient information regarding present fish population numbers and trends. In addition, the petition failed to provide substantial threat data concerning projected and ongoing management considerations with respect to the existing popular sport fishery and the stocking program for the trout. The petition also did not address the extent to which threats have been lessened by the significant recovery efforts now underway. More importantly, the future status of the subspecies may improve because of the significant recovery efforts now underway and the ongoing stocking program. Therefore, the Service finds that the petition does not present substantial information indicating that the listing of the Eagle Lake rainbow trout may be warranted.

The Service has reviewed the petition, literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the petitioned actions may be warranted. The Eagle Lake rainbow trout will remain a species of concern to the Service, and the Service will continue to seek information regarding the status or threats to the subspecies. If additional information becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

The petitioner also requested that critical habitat be designated and a recovery plan be developed. If the Service decides in the future to propose the fish for listing, the Service will determine whether designation of critical habitat is prudent at the time a species is listed under the Act. Recovery planning efforts begin once a species is listed.

Author

The primary author of this document is Kevin Stubbs, Sacramento Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 25, 1995.

John G. Rogers,

Director, Fish and Wildlife Service.

[FR Doc. 95–19353 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950725190–5190–10; I.D. 062695A]

RIN 0648–AH71

Coral and Coral Reefs of the Gulf of Mexico; Amendment 3

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

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). Amendment 3 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida north and west of the Levy/Dixie County line; remove the prohibition on taking wild live rock in the EEZ by chipping between the Pasco/Hernando County and Levy/Dixie County, Florida lines; establish annual quotas for wild live rock harvesting for 1995 and 1996 in the Gulf EEZ; and reduce the amount of substrate that may be taken with allowable octocorals in the Gulf EEZ. The intended effect is to protect the live rock resource and fishery habitat in the Gulf EEZ and to simplify the regulations implementing the FMP.

DATES: Written comments must be received on or before September 18, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review and an environmental assessment, or for copies of a minority report on Amendment 3 by two Council members, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, FAX 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

Under Amendment 2 to the FMP, the harvest of wild live rock in the Gulf EEZ off Florida north of Monroe County is being phased out and the taking of wild live rock elsewhere in the Gulf is prohibited. Effective January 1, 1997, all wild live rock harvests are prohibited in the Gulf EEZ. Amendment 2 also established certain restrictions on wild live rock harvesting and possession, required permits and reporting during the phase-out period, and established an aquacultured live rock permit system. The intent of Amendment 2 was to protect an essentially nonrenewable resource and prevent a net loss of fishery habitat. Florida has the only reported live rock landings from the EEZ; live rock harvesting is banned in Florida waters. The final rule to implement Amendment 2 was published December 28, 1994 (59 FR 66776).

During development of Amendment 2, the Council was concerned about the continuing effects of wild live rock harvesting in the northern Gulf, especially the Florida Panhandle area, because live rock is relatively scarce in

these areas. Accordingly, Amendment 2 included a prohibition on taking of wild live rock by chipping north of the Pasco/Hernando County, Florida line, but allowed harvest of loose, rubble rock in the EEZ north of that line.

Subsequent testimony by local governments, recreational divers, and environmental groups indicated that the measures of Amendment 2 were insufficient to protect hard bottom resources, especially north and west of the Levy/Dixie County line, where the abundance of hard bottom resources declines sharply.

Amendment 3

Amendment 3 proposes the following measures: Prohibit the taking of wild live rock in the Gulf EEZ off Florida north and west of the Levy/Dixie County line—the Panhandle area; remove the prohibition on taking wild live rock by chipping between the Pasco/Hernando County and Levy/Dixie County, Florida lines; establish a 500,000 lb (226,796 kg) annual quota for 1995 and 1996 in the Gulf EEZ off Florida north of Monroe County to the Levy/Dixie County line, which is the only area that would remain open to live rock harvesting in the Gulf EEZ; and reduce the amount of substrate that may be taken at the base of an allowable octocoral in the Gulf EEZ from 3 inches (7.6 cm) to 1 inch (2.5 cm). These measures constitute minor changes to the management regime established for live rock in Amendment 2.

Prohibiting the harvest of wild live rock off the Panhandle area would address the concerns discussed above regarding relative scarcity of the resource in that area. According to testimony received by the Council, this measure would benefit reef fish fishermen and recreational divers who depend on the fishery habitat provided by live rock resources in this area.

A total of 5 individuals in the Panhandle area are eligible for vessel permits to take wild live rock until 1997. Closure of the Panhandle area to commercial harvesting is not expected to have a significant adverse impact on the live rock industry because: (1) This area accounts for a relatively small percentage of total harvest; (2) eligible participants can relocate operations to areas unaffected by this closure; and (3) all current participants will have to cease wild harvest operations by 1997, whether or not Amendment 3 is implemented.

The Council proposes removal of the prohibition on chipping of wild live rock between the Pasco/Hernando County and Levy/Dixie County, Florida lines because this 3-county area most closely resembles the southern counties, in terms of availability of live rock and the characteristics of the fishery, than the Panhandle area to the north. Leaving the prohibition in place would result in three different kinds of management regimes during the phase out—no taking of live rock in the Panhandle area, taking of loose rubble rock only in the adjoining 3-county area, and taking by chipping in the area to the south. Thus, the removal of the prohibition on chipping for the 3-county area would simplify the regulations and enhance enforcement by standardizing the harvesting restrictions throughout the range of allowable wild live rock harvesting, i.e., from the Collier/Monroe County line to the Levy/Dixie County line.

Amendment 3 proposes a cap on the allowable harvest of wild live rock from the Gulf EEZ at the approximate current harvest level of 500,000 lb (226,796 kg) for 1995 and 1996. This quota would prevent increases in harvest levels during the phaseout due to increased demand and possible effort shifts from the Florida Keys to the Gulf EEZ. The live rock fishery in the Atlantic EEZ off the Florida Keys will close when the quota for that area is reached in 1995 and will not reopen in 1996 because the quota for 1996 and subsequent years is zero. Some permitted vessels are expected to move into the Gulf and continue harvesting during 1996.

Harvest and sale of wild live rock taken on or after the effective date of the closure would be prohibited. But the prohibition on sale of wild live rock after the effective date of the closure would not apply to wild live rock harvested and landed prior to that date—wild live rock is frequently maintained by harvesters for weeks or months before sale. This would be consistent with the current rule for a closure of the EEZ off the southern Atlantic states (§ 638.25(c)(2)).

During the development of Amendment 2, some individuals who harvest octocorals in the EEZ off Florida for sale to the aquarium industry testified that attached substrate is needed to anchor the octocoral in the aquarium. Such substrate could include live rock, possibly in violation of the restrictions on the harvest of live rock. Accordingly, Amendment 2 defined allowable octocorals to include the substrate within 1 inch (2.5 cm) of the octocoral in the EEZ off the southern Atlantic states and the substrate within 3 inches (7.6 cm) in the Gulf. However, in accordance with 50 CFR 638.3(c), if a state has a landing regulation that is more restrictive than a Federal landing restriction for octocorals, a person landing in that state must comply with the more restrictive state regulation.

Florida recently implemented a rule allowing only 1 inch (2.5 cm) of substrate from the attachment of the octocoral. Therefore, an individual harvesting octocoral from the Gulf EEZ and landing in Florida must comply with the more restrictive 1-inch (2.5-cm) rule. There are no reported landings of octocorals outside Florida. The Council and NMFS agree with Florida's finding that a 3-inch (7.6 cm) rule would allow the continued taking of excessive amounts of live rock as bycatch under the octocoral quota. Therefore, Amendment 3 would redefine allowable octocorals taken in the Gulf EEZ to include only the substrate within 1 inch (2.5 cm) of an allowable octocoral. This FMP change would result in an octocoral substrate measure for the Gulf of Mexico that is consistent with the provision for the EEZ off the southern Atlantic states and with the Florida rule. This change would have negligible effects on industry practices and income. Taking of an octocoral with more than 1 inch (2.5 cm) of attached substrate would constitute taking of live rock.

Additional background and rationale for the measures discussed above are contained in Amendment 3, the availability of which was announced in the **Federal Register** on July 13, 1995 (60 FR 36093).

Minority Report

A minority report signed by two Council members raises objections to Amendment 3's closure of the Panhandle area to live rock harvesting before the 1997 closure of the Gulf EEZ established under Amendment 2. These members believe that this measure is a reversal of the Council's earlier commitment to allow Panhandle fishermen sufficient time to convert to live rock aquaculture. Copies of the minority report are available (see **ADDRESSES**). The final rule for Amendment 3 will include responses to comments received on the proposed rule, including the issue raised in the minority report.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the regulations proposed by a council to be published within 15 days of receipt of an amendment and regulations. At this time, the Assistant Administrator for Fisheries, NOAA, (AA) has not determined that Amendment 3 is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable laws. The AA, in making that

determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under a previous rulemaking all current participants in the wild live rock fishery must cease business by 1997. This proposed rule merely accelerates the phaseout of wild live rock harvesting off the Panhandle area and is expected to affect up to 5 small businesses, which may relocate their operations from the closed area and continue operations until 1997. The measures in Amendment 3 would not: (1) Reduce annual gross revenues in excess of 5 percent; (2) significantly increase compliance or production costs of participants; (3) require capital investment to comply with the rule; or (4) require current participants to cease business. All entities involved are small entities. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

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

2. In § 638.2, the definition for ''Allowable octocoral'' is revised to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina,* plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

* * * * *

3. In § 638.7, paragraphs (m), (n), and (p) are revised to read as follows:

§ 638.7 Prohibitions.

* * * * *

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5′ N. lat., as specified in § 638.25(a), or in the Gulf of Mexico EEZ north and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary or south of 25°20.4′ N. lat., as specified in § 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5′ N. lat., as specified in § 638.25(b).

* * * * *

(p) Harvest or possess in the Gulf of Mexico EEZ from a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary to 25°20.4′ N. lat. wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b).

* * * * *

4. Section 638.26, is revised to read as follows:

§ 638.26 Wild live rock in the Gulf of Mexico.

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) North and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary, that is, from a point at the mouth of the Suwannee River at 29°17.25′ N. lat., 83°09.9′ W. long.; or

(2) South of 25°20.4′ N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* In the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section to 25°20.4′ N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19–L) buckets, or volume equivalent (16.88 ft^3 (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

(d) *Quota and closure.*

(1) The annual quota for wild live rock from the EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4′ N. lat. is 500,000 lb (226,796 kg) for the fishing years that begin January 1, 1995, and January 1, 1996. Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(2) When the quota specified in paragraph (d)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the **Federal Register**. Harvest and purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale of wild live rock taken on or after the effective date of such notification would be prohibited. But the prohibition on purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ of the Gulf of Mexico, after the effective date of the closure, would not apply to wild live rock harvested and landed prior to that date.

[FR Doc. 95–19325 Filed 8–2–95; 10:20 am]

BILLING CODE 3510–22–W

Notices

Federal Register

Vol. 60, No. 151

Monday, August 7, 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

Agricultural Marketing Service

[TM–95–00–2]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of the Act. The NOSB was originally established on January 24, 1992, with individual members appointed for staggered appointments of 3, 4, and 5 years. The terms of five members will expire in January 1996. The Secretary seeks nominations of individuals to be considered for selection as NOSB members.

DATES: Written nominations, with resumes, must be postmarked on or before August 31, 1995.

ADDRESSES: Nominations should be sent to Dr. Harold S. Ricker, Assistant Director, Transportation and Marketing Division, Room 4006 South Building, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), P. O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, (202) 720–2704.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Secretary seeks nominations of individuals to be considered for selection as NOSB members.

A member of the NOSB shall serve for a term of 5 years, except that initial appointments were for staggered terms of 3, 4, and 5 years. The terms of five members of the current NOSB will expire on January 24, 1996. A member may serve consecutive terms if such member served an original term that was less than 5 years. However a member of the NOSB, with 4 years of service, seeking reappointment may only be reappointed in accordance with 7 U.S.C. 2283 (c) which states, ''No person other than an officer or employee of the Department of Agriculture may serve more than six consecutive years on an advisory committee, unless authorized by the Secretary.''

Nominations are sought for the positions of representatives of farmers/growers (2), consumer/public interest groups (2), and environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic farming operation, an individual who represents public interest or consumer interest groups, or an expert in the area of environmental protection and resource conservation.

Selection criteria will include such factors as: demonstrated experience and interest in organics; commodity and geographic representation; endorsed support of consumer and public interest organizations; demonstrated experience with environmental concerns; and other factors as may be appropriate for specific positions.

After applications have been reviewed, individuals receiving nominations will be contacted and supplied with biographical forms. The biographical information must be completed and returned to USDA within 10 working days of its receipt, to expedite the clearance process that required by the Secretary.
7 U.S.C. 6501 et seq.

Dated: July 31, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–19333 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Upper Columbia River Basin Ecosystem Management Strategy, Northern and Intermountain Regions; Upper Columbia River Basin Ecosystem Management Strategy, States of Idaho, Montana, Wyoming, Utah, and Nevada

AGENCY: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Revised notice of intent to prepare and environmental impact statement (EIS) and conduct planning activity which may amend Forest Service Regional Guides and will amend Forest Service and Bureau of Land Management land use plans.

SUMMARY: The Forest Service and Bureau of Land Management published a notice of intent to prepare an EIS and conduct planning activity in the **Federal Register** (Vol. 59, No. 234, pages 63071–63073) on December 7, 1994. That notice of intent stated that the EIS will consider alternative strategies for management of National Forest System and BLM-administered lands and their effects in the entire Upper Columbia River Basin (UCRB). It is now necessary to revise that notice of intent in order to reflect a change in the scope of the EIS and planning.

FOR FURTHER INFORMATION CONTACT: Gary Wyke or Cindy Deacon Williams, EIS team coleaders, 304 North 8th Street, Room 350, Boise, ID 83702, phone (208) 334–1770.

SUPPLEMENTARY INFORMATION: A portion of the UCRB is within the Greater Yellowstone Ecosystem (GYE). The GYE is an area of common climatic, physical, biological, social, and economic factors that needs to be considered in its entirety. The Forest Service intends to provide direction for National Forest Service System lands within the GYE in an ecosystem context. Therefore, the Targhee National Forest and those portions of the Bridger-Teton and Caribou National Forests within the GYE will not be included in the alternate strategies for management nor in the record of decision for the UCRB.

Dated: July 24, 1995.

James Caswell,

Acting Deputy Regional Forester, Northern Region, USDA Forest Service.

Dated: July 24, 1995.

Jack Blackwell,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

Dated: July 24, 1995.

Martha Hahn,

State Director, Idaho, USDI Bureau of Land Management.

Dated: July 24, 1995.

Larry Hamilton,

State Director, Montana, USDI Bureau of Land Management.

[FR Doc. 95–19376 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–84–M

North Powder Wild and Scenic River Management Plan Environmental Assessment, Wallowa-Whitman National Forest, Baker County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On July 13, 1995, Wallowa-Whitman Forest Supervisor, R.M. Richmond, signed a Decision Notice which adopted into the Forest Plan the North Powder Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for the North Powder River. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the North Powder Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR Part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the North Powder River Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald.

FOR FURTHER INFORMATION CONTACT: For further information, contact Steve Davis, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–1316.

Dated: July 13, 1995.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 95–19377 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M

Augusta Timber Sale, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest trees and build roads in the Augusta drainage of the Blue River Ranger District. Approximately 200 acres of trees will be harvested and approximately 0.5 miles of road will be constructed. The proposal results from an extensive landscape design and watershed analysis conducted in the Augusta area. The dominant theme for that design was to base landscape and watershed objectives, designs, and prescriptions on an interpreted range of ''natural'' variability of disturbance processes.

DATES: Comments concerning the scope of the analysis should be received in writing by September 10, 1995.

ADDRESSES: Send written comments to Lynn Burditt, District Ranger, Blue River Range Station, P.O. Box 199, Blue River, Oregon, 97413.

FOR FURTHER INFORMATION CONTACT: Karen Geary, Resource Planning Assistant, (503) 822–3317.

SUPPLEMENTARY INFORMATION: The Augusta Creek timber sale proposal is one result of the Augusta Creek Project, a natural disturbance-based landscape ''design'' for a managed forest. The landscape design was projected for 200 years into the future using 20 year time steps. This specific timber sale proposal includes writing prescriptions for the nine blocks that would be in early seral conditions at the end of the first 20-year time step. This will result in harvesting approximately 200 acres of trees in the first timber sale entry and building approximately 0.5 miles of roads to access the trees. The nine blocks are located in T19S, R5E, Section 1; T19S, R51/2E, Sections 9 and 16; T18S, R5E, Sections 35 and 36; T18S, R51/2E, Sections 31, 32, and 33 (Lat 43°56′00″, Long 122°7′30″).

Detailed ground review and alternative development will be concentrated on these nine landscape blocks. Decisions will include identification of the timing and location of timber harvests, silvicultural prescriptions, levels of green and dead tree retention, and the spatial patterns of retention trees.

The Augusta Creek Landscape Design Project was initiated to establish and integrate landscape and watershed objectives into a landscape design to guide management activities within a 19,000 acre planning area in western Oregon. The objectives were to maintain native species, ecosystem processes and structures, and long-term ecosystem productivity in a Federally owned and managed landscape with substantial acreage allocated to timber harvest. A dominant theme has been to base landscape and watershed objectives, designs, and prescriptions on an interpreted range of ''natural'' variability of disturbance processes. A fire history study characterized fire patterns and regimes over the last 500 years. Changes in the existing and surrounding landscape due to past intensive human uses were also factored into the landscape design. Landscape prescriptions include a small-watershed based aquatic reserve system and major valley bottom corridor reserves. Where timber harvest is allocated, four landscape management areas prescribe varying rotation ages (100–300 years), green tree retention levels (15–50%), and spatial patterns as derived from interpretations of fire regimes. These prescriptions were linked to specific blocks of land, which provides an efficient transition to site-level planning and project implementation.

The EIS will tier to the Willamette National Forest Land and Resource Management Plan (1990) as amended by the Record of Decision and Standards and Guidelines for Management of Habitat For Late Successional and Old-Growth Forest Related Species within the Range of the Northern Spotted Owl (1994).

Scoping will include public meetings and potentially visits to the site. The first public meeting is scheduled for August 3, 1995 and will be held at the Lane Transit District office in Eugene, Oregon. Additional public meetings will be held in August and September.

Preliminary scoping identified a few issues. One of the issues is the location of some of the units and possible road construction in the Chucksney inventoried roadless area. This is the reason the Forest Service is preparing an EIS. Other issues identified at this point include water quality in Augusta Creek

and in the South Fork of the McKenzie River and the Wild and Scenic Study River values of the South Fork McKenzie river.

The lead agency for this proposal is the Forest Service. The responsible official is Lynn Burditt, District Ranger. The Forest Service invites your comments or ideas on this proposal and asks that they please be sent in writing to the above address.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1995. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* versus *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *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 them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (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.)

The final EIS is scheduled to be completed by December 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 the decision and rationale for the decisions in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: July 27, 1995.

Marsha Scutvick,

Acting Forest Supervisor.

[FR Doc. 95–19378 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Seminole Electric Cooperative, Inc.; Final Supplemental Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of final supplemental environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a Final Supplemental Environmental Impact Statement (FSEIS) related to Seminole Electric Cooperative, Inc.'s, (Seminole) proposed Hardee Unit 3. The FSEIS is a supplement to the Final Environmental Impact Statement issued in January 1991 by the Rural Electrification Administration (predecessor of RUS).

A Draft Supplemental Environmental Impact Statement was issued for Hardee Unit 3 in May of 1995. The availability of the draft appeared in the **Federal Register** and in newspapers with a general circulation in Polk and Hardee Counties, Florida. There was a 45-day comment period on the draft which ended on July 17, 1995. Comments received during this comment period have been included in the FSEIS and have been addressed therein as appropriate.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, Rural Utilities Service, Ag. Box 1569, Washington, DC 20250, Telephone (202) 720–1784, Fax (202) 720–7491.

SUPPLEMENTARY INFORMATION: The FSEIS for Hardee Unit 3 covers the construction and operation of 440 MW of additional generating capacity to be installed at the existing 1,300-acre Hardee Power Station site. The Hardee Power Station site is located in Hardee and Polk counties approximately 9 miles northwest of Wauchula, 16 miles south-southwest of Bartow, and 40 miles east of Tampa Bay. The site is bordered on the east by Hardee County Road 663, a CSX Railroad right-of-way, and CF Industries' Hardee Complex. IMC-Agrico properties surround the remaining portions of the site. Payne Creek flows along the southern and western boundary of the Hardee Power Station site. The proposed Hardee Unit 3 would occupy approximately 50 acres of this site.

As proposed in the Final Environmental Impact Statement for the Hardee Power Station, Hardee Power Partners has constructed and operates 295 MW of generation capacity at the Hardee Power Station and proposes an additional 145 MW of generation capacity there by the year 2003 for use by Seminole or TECO Power Services, Corp. Seminole originally proposed to construct and operate an additional 220 MW at the Hardee Power Station at a future date that was to be determined. That addition, along with Hardee Power Partners' 145 MW addition, would have increased the existing 295 MW Hardee Power Station capacity to 660 MW. Seminole now proposes in the FSEIS to construct 440 MW of additional capacity at the Hardee Power Station at a specified date, 1999, instead of the originally proposed 220 MW addition at an unspecified date. As now proposed, the Hardee Power Station Site would be made up of a total of 880 MW of capacity when completed.

The proposed Hardee Unit 3 would consist of natural gas fired combustion turbines utilizing heat recovery steam generators that will operate efficiently by recovering heat from the combustion turbines. Fuel oil would be used as a backup source of fuel. These are the same type of generators already installed at the Hardee Power Station (295 MW) and the same type proposed for future installation (145 MW) at the site by Hardee Power Partners. The natural gas would be transported via an existing 18 inch diameter, underground gas pipeline connected to the Florida Gas Transmission System to the Hardee Power Station. Three existing 230 kilovolt transmission lines would be utilized to connect Hardee Unit 3 into the Florida transmission grid.

Alternatives to the project as proposed included no action, design alternatives, alternative fuels, and conservation.

Seminole has provided RUS with a Site Certification Application/Environmental Analysis for Hardee Unit 3 which is the primary support document used by RUS to develop its FSEIS. RUS has concluded that the Site Certification Application/Environmental Analysis for Hardee Unit 3 represents an accurate assessment of the potential environmental impacts related to the proposed project. The Hardee Unit 3 Site Certification Application/Environmental Analysis has been incorporated by reference into the FSEIS and is available for inspection by interested parties at RUS or Seminole at the addresses provided in this notice. That document, along with the FSEIS, will also be available for review at the following libraries:

Bartow Public Library, 315 E. Parker Street, Bartow, Florida 33830.

Hardee County Library, 315 N. 6th Avenue, Suite 114, Wauchula, Florida 33837.

Notice of availability of the FSEIS and the 30-day comment period is being published in the **Federal Register** by RUS and EPA. Seminole will have a notice similar to this one published in newspapers of general circulation in Polk and Hardee Counties. As it is possible that RUS, EPA, and Seminole's notices will not appear on the same date, the 30-day comment period will begin on the date the latest notice (RUS, EPA or Seminole's) is published. In no case would the 30-day comment period end prior to 30 days from the publication date of this notice. Questions concerning the closing date of the 30-day comment period can be referred to Mr. Lawrence Wolfe at (202) 720–1784.

Anyone wishing to comment on the FSEIS should do so in writing within the 30-day comment period to RUS at the address provided in this notice. All comments received during the comment period will be given consideration in the formulation of final determinations regarding RUS's action related to the Hardee Unit 3. Prior to taking its final action related to the Hardee Unit 3, RUS will prepare a Record of Decision. The availability of the Record of Decision will not be announced nor circulated as have the Draft Supplemental Environmental Impact Statement and the FSEIS. Anyone wishing a copy of RUS's Record of Decision for the project should notify RUS at the address provided in this notice.

Dated: July 28, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–19334 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–15–P

Yazoo Valley Electric Power Association; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by Yazoo Valley Electric Power Association to use its general funds to construct a headquarters facility in Yazoo County, Mississippi.

The FONSI is based on a Borrower's Environmental Report (BER) submitted to RUS by Yazoo Valley Electric Power Association. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with RUS Environmental Policies and Procedures, 7 CFR 1794.33, RUS prepared an environmental assessment for the project based on the information provided in the BER.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, RUS, Ag. Box 1569, Washington, DC 20250–1569, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The headquarters facility is proposed to be located in Yazoo City, Mississippi, on Gordon Avenue adjacent to the National Guard Armory. The size of the proposed site for the headquarters facility is approximately 25 acres of which 15 acres would be developed. The headquarters facility will consist of a 12,823 square foot building to be used for assembly, operations, administration, and engineering office space, a 10,800 square foot warehouse, a 9,000 square foot shop, approximately 90 parking spaces, a fuel service island, a transformer storage area, and a pole storage yard.

RUS considered the alternatives of no action and alternative site locations for a new headquarters facility.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Yazoo Valley Electric Power Association, 1408 Grand Avenue, Yazoo City, Mississippi 39194–0008, telephone (601) 746–4251.

Dated: July 31, 1995.

Adam M. Golodner,

Deputy Administrator, Program Operations.

[FR Doc. 95–19335 Filed 8–4–95; 8:45 am]

BILLING CODE 3410–15–M

BOARD FOR INTERNATIONAL BROADCASTING

Notice of Agency Termination

Please be advised that, consistent with the U.S. International Broadcasting Act of 1994, (Public Law 103–236, sec. 310(e)), the Board for International Broadcasting Act of 1973, as amended, is repealed effective September 30, 1995, or the date on which all members of the new Broadcasting Board of Governors are confirmed, whichever is earlier.

The primary functions of the BIB will be consolidated under the new Board, with expanded responsibilities, within USIA. Confirmation of the new Board appears imminent, triggering the abolition of the BIB. The following address is provided for any future contact after the date of transfer: Broadcasting Board of Governors, 330 Independence Avenue, SW., Suite 3300, Washington, DC 20547, Phone—202–619–3375.

Richard W. McBride,

Executive Director.

[FR Doc. 95–19367 Filed 8–4–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Office of Acquisition Management.

Title: Revision to the Commerce Acquisition Regulation (CAR) Clause at 1352.217–109 Entitled ''Insurance Requirements.''

Form Number(s): 1352.217–109.

Agency Approval Number: 0690–0010.

Type of Request: Extension of a currently approved collection.

Burden: 33 hours.

Number of Respondents: 33.

Avg Hours Per Response: 1 hour.

Needs and Uses: In its contracts for construction, alteration and repair of ships, the Department of Commerce requires each selected contractor to procure and maintain insurance as specified in the CAR Clause 1352.217–109, ''Insurance Requirements.'' The clause also requires the contractor to submit proof of this insurance to the contracting officer before the work under the contract is authorized to start.

Affected Public: Businesses or other for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of Acquisition Management.
Title: Department of Commerce Solicitations: Requests for Proposals (RFPs) or Invitations for Bids (IFBs).
Form Number(s): None.
Agency Approval Number: 0690–0008.
Type of Request: Extension of a currently approved collection.
Burden: 108,000 hours.
Number of Respondents: 2,700.
Avg Hours Per Response: 40 hours.
Needs and Uses: The Commerce Department is required by the Competition in Contracting Act to seek maximum competition when issuing contracts for supplies and services. The Department is required to issue solicitations which require prospective contractors to prepare and submit technical and cost proposals as part of the Federal acquisition process for awarding these contracts.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of Acquisition Management.
Title: Department of Commerce Partners in Quality Contracts (PQC) Program.
Form Number(s): None.
Agency Approval Number: 0690–0012.
Type of Request: Extension of a currently approved collection.
Burden: 4,400 hours.
Number of Respondents: 100.
Avg Hours Per Response: 44 hours.
Needs and Uses: The National Performance Review (NPR) conducted by Vice President Gore outlined several objectives, including improving the Federal acquisition process. The Department of Commerce (DOC) has developed a program that is philosophically consistent with NPR, known as the Partners in Quality Contracting (PQC) Program. PQC is a creative nonmonetary recognition program that showcases the importance of quality in the government acquisition process.
Affected Public: Business or other–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: National Institute of Standards and Technology (NIST).
Title: NIST Manufacturing Extension Partnership.
Form Number(s): None.
Agency Approval Number: 0693–0005.
Type of Request: Extension of a currently approved collection.
Burden: 10,000 hours.
Number of Respondents: 250.
Avg Hours Per Response: 40 hours.
Needs and Uses: In accordance with the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k and 2781, NIST seeks to announce the availability of funds for planning and implementation of manufacturing extension center and related projects. The purpose of the information collection is to obtain proposals submitted to specific solicitations. Respondents are affiliated with not–for–profit organizations which operate these centers or deliver supporting services.
Affected Public: Not–for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: National Institute of Standards and Technology (NIST).
Title: Accreditation Body Evaluation Program under the Fastener Quality Act P.L. 101–592.
Form Number(s): None.
Agency Approval Number: 0693–0015.
Type of Request: Revision of a currently approved collection.
Burden: 20 hours.
Number of Respondents: 5.
Avg Hours Per Response: 4 hours.
Needs and Uses: NIST needs the information to evaluate accreditation bodies which are applying for approval to accredit testing laboratories under the scope of the Fastener Quality Act P.L. 101–592.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: National Institute of Standards and Technology (NIST).
Title: National Voluntary Conformity Assessment System Evaluation Program (NVCASE).
Form Number(s): None.
Agency Approval Number: 0693–0019.
Type of Request: Extension of a currently approved collection.
Burden: 20 hours.
Number of Respondents: 10
Avg Hours Per Response: 2 hours.
Needs and Uses: NIST needs the information to evaluate conformity assessment bodies which are applying for recognition to provide needed services to manufacturers whose products must satisfy mandatory foreign regulations prior to import.
Affected Public: Business or other–for–profit and Not–for–profit institutions.
Frequency: Annual.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Virginia Huth, (202) 395–6929.

Agency: International Trade Administration/US&FCS/EPS.
Title: User Satisfaction Surveys Evaluation Program.
Form Number(s): ITA–4108P–A1, ITA–4110P et al.
Agency Approval Number: ITA–41018P–A1, ITA–4110P et al.
Type of Request: Revision of a currently approved collection.
Burden: 5,444 hours.
Number of Respondents: 31,572.
Avg Hours Per Response: 10 minutes.
Needs and Uses: ITA provides products and services to help U.S. exporters operate in international markets. ITA units must have a tool that provides feedback on their customers' satisfaction with their products and services. This information will be used by individual offices to improve their ability to deliver services or enhance products.
Affected Public: Business or other–for–profit institutions and State, Local or Tribal Government.
Frequency: Annual.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration.
Title: Certified Trade Mission: Application for Status.
Form Number(s): ITA–4127P.
Agency Approval Number: 0625–0215.
Type of Request: Extension of a currently approved collection.
Burden: 60 hours.
Number of Respondents: 60.
Avg Hours Per Response: 1 hour.

Needs and Uses: The Certified Trade Mission Program offers trade mission guidance and assistance to Federal, state and local government developmental agencies, chambers of commerce, industry trade associations and other export groups.

Affected Public: Individuals or households, Business or other–for–profit, Not–for–profit institutions, Federal Government and State, Local or Tribal Government.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: International Trade Administration/US&FCS/DO.

Title: Export Assistance Request.

Form Number(s): ITA–736P.

Agency Approval Number: 0625–0205.

Type of Request: Extension of a currently approved collection.

Burden: 1,250 hours.

Number of Respondents: 25,000.

Avg Hours Per Response: 3 minutes.

Needs and Uses: As a result of an internal management study, ITA adopted a management strategy to target export assistance efforts to the infrequent exporter. ITA district offices must have a vehicle upon which to screen unsolicited calls for assistance and a vehicle upon which to make appropriate referrals to supporting organizations and agencies.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Office of the Inspector General.

Title: Applicant for Funding Assistance.

Form Number(s): CD–346.

Agency Approval Number: 0605–0001.

Type of Request: Extension of a currently approved collection.

Burden: 240 hours.

Number of Respondents: 960.

Avg Hours Per Response: 4 hours.

Needs and Uses: This survey obtains information that is used to establish the good character of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs that may receive grants, loans or loan guarantees from the Department of Commerce.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Economic Development Administration.

Title: Proposal for Federal Assistance and Application for Federal Assistance.

Form Number(s): ED–900P and ED–900A (formerly ED–101P and ED–101A).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 72,000 hours.

Number of Respondents: 2,500.

Avg Hours Per Response: 28 hours.

Needs and Uses: This survey obtains information that is used to establish the good character of principal officers and employees of organizations, firms, or recipients or beneficiaries of grants, loans, or loan guarantee programs that may receive grants, loans or loan guarantees from the Department of Commerce.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective desk officer.

Dated: August 1, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–19361 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–427–801]

Antifriction Bearings From France; Notice of United States Court of International Trade Decision

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

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF France, S.A.*, v. *United States*, Slip Op. 95–123 (*SKF-France*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of a number of issues for *SKF-France*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-France*, Slip Op. 95–123, remanded *AFBs II* to the Department to (1) include in the Department's circumstance-of-sale adjustment ''first level'' indirect selling expenses (these are expenses incurred by the SKF manufacturers on sales to SOS, a related distributor, that relate to SOS's sales of subject merchandise to unrelated customers) incurred by SKF affiliated manufacturers Sarma, ADR, and SKF France, S.A. (collectively known as ''SKF''); (2) reduce the amount of the home market indirect selling expense adjustment only for expenses incurred by SKF which do not relate to SOS's sales of subject merchandise to unrelated customers; and (3) apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-France*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken*, the Department must continue the

suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19433 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–801]

Antifriction Bearings From Germany; Notice of United States Court of International Trade Decision

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

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF GmbH* v. *United States,* Slip Op. 95–121 (*SKF-Germany*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.,* 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Germany.* The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Germany,* Slip Op. 95–121, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Germany,* the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken,* the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19432 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–801]

Antifriction Bearings From Italy; Notice of United States Court of International Trade Decision

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

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF Industrie S.p.A.* v. *United States,* Slip Op. 95–120 (*SKF-Italy*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.,* 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Italy.* The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Italy,* Slip Op. 95–120, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Italy,* the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfulls this obligation.

Pursuant to the decision in *Timken,* the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19431 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–401–801]

Antifriction Bearings From Sweden; Notice of United States Court of International Trade Decision

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

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF Sverige AB* v. *United*

States, Slip Op. 95–124 (*SKF-Sweden*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF-Sweden*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF-Sweden*, Slip Op. 95–124, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF-Sweden*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfills this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19430 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; Notice of United States Court of International Trade Decision

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

SUMMARY: On July 5, 1995, in *SKF USA Inc. and SKF (U.K.) Limited* v. *United States*, Slip Op. 95–122 (*SKF–UK*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the final results of the second administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from France, *et al.*, 57 FR 28360 (June 24, 1992) (*AFBs II*). The CIT had previously remanded the final results to the Department for the reconsideration of one issue for *SKF–UK*. The CIT has now entered final judgment on all issues. The results covered the period May 1, 1990 through April 30, 1991.

EFFECTIVE DATE: July 15, 1995.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1995, the CIT in *SKF–UK*, Slip Op. 95–122, remanded *AFBs II* to the Department to apply the U.S. inland insurance rate to inventory value instead of to unit price. The Department submitted its results of redetermination pursuant to this remand order on April 25, 1995. On July 5, 1995, in *SKF–UK*, the CIT affirmed the Department's results of remand and entered final judgment on all issues.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's decision on July 5, 1995, constitutes a decision not in harmony with the Department's final results. Publication of this notice fulfills this obligation.

Pursuant to the decision in *Timken*, the Department must continue the suspension of liquidation of entries pending the later of the expiration of the period for appeal or the conclusion of any appeal. Further, absent an appeal, or, if appealed, upon a ''conclusive'' court decision affirming the CIT's opinion, the Department will amend the final affirmative results of *AFBs II* to reflect the amended margins of the Department's redetermination on remand, which was affirmed by the CIT.

Dated: July 28, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–19429 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Notice of the National Ocean Service's Discontinuation of the Printing and Distribution of Book-Form Tide and Tidal Current Prediction Tables as a Standard Nautical Product

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration's National Ocean Service is announcing that, beginning with the 1996 edition, NOS will no longer print and distribute book-form Tide and Tidal Current Prediction Tables as a standard nautical product.

FOR FURTHER INFORMATION CONTACT: Richard Sillcox, (301) 713–2812, or (202) 482–2152.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a–883j, NOS is authorized to conduct tide and current observations, prepare analyses and predictions of the tide and current data, and disseminate to the public such data and information resulting from the observations and analyses. Consistent with this authority, NOS had annually printed and distributed book-form Tide and Tidal Current Prediction Tables (Tables) as a standard nautical product.

NOS is experiencing a shortage of funds to print and distribute the Tables. In addition, the role of the NOS with

regard to the publication of the Tables is redefined to be that of maintaining and updating the tidal prediction database from domestic and international sources and generating the annual predictions and associated information. Therefore, beginning with the 1996 edition of those Tables, NOS will no longer print and distribute book-form Tables as a standard nautical product.

The titles of the NOS publications affected are:

''Tide Tables 1996—East Coast of North and South America including Greenland'';

''Tide Tables 1996—West Coast of North and South America including the Hawaiian Islands'';

''Tide Tables 1996—Central and Western Pacific Ocean and Indian Ocean'';

''Tide Tables 1996—Europe and West Coast of Africa including the Mediterranean Sea'';

''Tidal Current Tables 1996—Atlantic Coast of North America'';

''Tidal Current Tables 1996—Pacific Coast of North America and Asia'';

''Regional Tide and Tidal Current Tables 1996—New York Harbor to Chesapeake Bay''; and

''Supplemental Tidal Predictions—Anchorage, Nikiski, Seldovia, and Valdez, Alaska—1996''.

Although NOS will no longer print and distribute the Tables in a book format, a complete set of Tables will be made available to all who request it as a special compilation of prediction information on CD–ROM. The CD–ROM will contain camera-ready PostScript page-images. There will be a fee charged for production and distribution of any requested special compilation. Although available to all who request it, the CD–ROM vehicle may also be used by private printers who wish to print in book-form the full set of Tables for distribution to retailers and the general public. The annual predictions and associated information will be made available on the same schedule as followed in previous years.

In addition to the CD–ROM, two new vehicles will be provided for obtaining predictions. First, for the approximately 3700 domestic tide stations, a 3-day window of predictions for any date in 1995 and 1996 will be offered on the NOS, Coastal and Estuarine Oceanography Branch, Tidal Information Distribution and Education System (TIDES) electronic bulletin board which is accessible by telephone modem (301–713–4492, N–8–1, up to 9600 baud). Second, for domestic tidal reference stations, predictions covering a 4-day period beginning on the day of inquiry will be available on the NOS, Coastal and Estuarine Oceanography Branch, Mosaic Homepage on the Internet (http://www–ceob.nos.noaa.gov). These two new communication pathways will also be used to continuously inform customers when prediction products become available or finalized during the year. Further, NOS will continue to provide tide and tidal current prediction and associated information on the media and in the time-frames with which customers have been familiar from past experience with NOS.

Thus, all requests for prediction and associated information continue to be welcome. Beginning immediately, NOS is accepting prediction data requests via two new communication pathways. The first is the TIDES electronic bulletin board. The second is the NOS, Coastal and Estuarine Oceanography Branch, World Wide Web Homepage.

As NOS is no longer printing and distributing the Tables in book-form, the NOS Nautical Chart Sales Agents will no longer obtain the Tables in book-form from the NOS Distribution Branch. Instead, they may obtain quantities of the Tables for resale to the public from various private printers and distributors. NOS is aware of a small number of vendors who have shown interest in printing and distributing the Tables in book-form. NOS requests any and all parties who may be interested in printing and distributing the Tables in book-form to contact NOS.

NOS has been in contact with the U.S. Coast Guard concerning 33 CFR Part 164 (Navigation and Safety Rules). Questions concerning that regulation should be addressed to Chief, Navigation Rules Branch, G–NVT–3, United States Coast Guard, Washington, DC 20593, telephone 202–267–0416.

NOS is publishing this notice consistent with section 8a(6)(j) of Office of Management and Budget Circular A–130. Anyone with questions or comments regarding the above subject or private printers and distributors wishing more information should write, fax or e-mail to: NOAA, National Ocean Service Attn: Tidal Predictions, N/OES33, 1305 East-West Highway, Silver Spring, MD 20910, fax 301–713–4501, (http://www–ceob.nos.noaa.gov).

Dated: July 31, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–19302 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona, California, New Mexico and Texas Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Chairpersons of the Arizona, California, New Mexico and Texas Advisory Committees to the Commission will convene at 10:00 a.m. and adjourn 12:00 p.m. on Saturday, August 26, 1995, at the Doubletree Hotel, 201 Marquette N.W., Albuquerque, New Mexico 87102. The purpose of the meeting is to discuss a draft report and follow-up activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Thomas Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 27, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19389 Filed 8–4–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on Friday, September 8, 1995, at the Los Angeles Airport Marriott, 5844 West Century, Los Angeles, California 90045. The purpose of the meeting is to discuss the Chairpersons' conference and a draft report on immigration law enforcement.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael C. Carney, 213–580–7903, or Thomas V. Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–19390 Filed 8–4–95; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

August 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and announcing Guaranteed Access Levels.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated July 6, 1995, the Governments of the United States and El Salvador agreed, pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), to establish limits for Categories 351/651 and 352/652 for a three-year term—March 27, 1995 through December 31, 1995; January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998. The governments also agreed to establish Guaranteed Access Levels (GALs) for Categories 351/651 and 352/652 for the periods January 1, 1996 through December 31, 1996; January 1, 1997 through December 31, 1997; and January 1, 1998 through March 26, 1998.

Beginning on August 9, 1995, the U.S. Customs Service will start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 and 352/652 that are destined for El Salvador and subject to the GAL established for Categories 351/651 and 352/652 for the period beginning on January 1, 1996 and extending through December 31, 1996. These products are governed by Harmonized Tariff item number 9802.00.8015 and chapter 61 Statistical Note 5 and chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule. Interested parties should be aware that shipments of cut parts in Categories 351/651 and 352/652 must be accompanied by a form ITA–370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in El Salvador in order to qualify for entry under the Special Access Program.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current restraint period for Categories 351/651 and 352/652 to end on December 31, 1995 at increased levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 32654, published on June 23, 1995; and 60 FR 19892, published on April 21, 1995.

Requirements for participation in the Special Access Program are provided in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 60 FR 2740, published on January 11, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1995.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 16, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period beginning on March 27, 1995 and extending through March 26, 1996.

Effective on August 9, 1995, you are directed, pursuant to the Memorandum of Understanding dated July 6, 1995 between the Governments of the United States and El Salvador, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, to amend the current restraint period to end on December 31, 1995 and increase the limits for Categories 351/651 and 352/652 as follows:

Category	Restraint period [1]
351/651	500,000 dozen.
352/652	8,000,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 26, 1995.

Beginning on August 9, 1995, the U.S. Customs Service is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Categories 351/651 and 352/652 that are destined for El Salvador and re-exported to the United States on and after January 1, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19427 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

August 2, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 9, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17334, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 2, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on August 9, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Levels in Group I	
237	1,121,432 dozen.
239	10,962,326 kilograms.
331/631	4,974,169 dozen pairs.
333/334	229,988 dozen of which not more than 32,166 dozen shall be in Category 333.
335	134,745 dozen.
336	705,875 dozen.
338/339	2,436,881 dozen.
340/640	983,118 dozen.
341/641	823,900 dozen.
342/642	541,688 dozen.
345	161,313 dozen.
347/348	1,968,385 dozen.
350	84,523 dozen.
351/651	615,853 dozen.
352/652	2,202,316 dozen.
359–C/659–C [2]	755,095 kilograms.
361	665,830 numbers.
369–S [3]	47,853 kilograms.
431	182,387 dozen pairs.
433	3,269 dozen.
443	39,541 numbers.
445/446	31,530 dozen.
447	7,950 dozen.
611	5,413,520 square meters.
633	44,608 dozen.
634	408,802 dozen.
635	326,008 dozen.
636	1,525,939 dozen.
638/639	2,022,195 dozen.
643	642,936 numbers.
645/646	638,694 dozen.
647/648	915,277 dozen.
649	7,041,781 dozen.
650	92,682 dozen.
659–H [4]	1,155,522 kilograms.
847	678,250 dozen.
Group II	
200–229, 300–326, 330, 332, 349, 353, 354, 359–O [5], 360, 362, 363, 369–O [6], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [7], 665, 666, 669–O [8], 670–O [9], 831–846 and 850–859, as a group.	112,952,469 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H).

[8] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[9] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–19428 Filed 8–4–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Postponement of Public Hearing and Extension of the Comment Period for the Draft Environmental Impact Statement for Construction and Operation of a Relocatable Over the Horizon Radar, Puerto Rico

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the Commonwealth of Puerto Rico Public Law Number Nine, Section 4(c), the Department of Navy, has prepared and filed with the US Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the construction and operation of a Relocatable Over the Horizon Radar (ROTHR) system in Puerto Rico.

On July 24, 1995, the Navy announced in the **Federal Register** that public hearings would be held on August 8, 1995 in Lajas, PR and on

August 10, 1995 in Vieques, PR to solicit public comment on the DEIS for ROTHR. In order to allow additional time for public review, the public hearings have been postponed and the public comment period has been extended to September 29, 1995. Notice of the revised hearing dates will be published in local newspapers at least 15 days prior to the hearings.

The DEIS has been distributed to various federal, Commonwealth, and local agencies, elected officials, special interest groups, and libraries. The DEIS is available for review at the following locations: Town Hall, Municipality of Vieques, Vieques Island, PR; Public Library, Municipality of Lajas, PR; and Mayor's Office, Lajas, PR. A limited number of copies of the DEIS are available by contacting Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 965–4429.

Written statements and/or comments regarding the DEIS should be mailed to: Department of the Navy, Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA 23511–2699 (Attn. Ms. Linda Blount, Code 2032LB). Questions may be directed to Ms. Linda Blount, (804) 322–4892 or Sr. Jose Negron, Commander Fleet Air, Caribbean, (809) 865–4429. All comments must be postmarked no later than September 29, 1995 to become part of the official record.

Dated: August 19, 1995.

L.R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–19322 Filed 8–4–95; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Preparation of an Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) for a geologic repository at Yucca Mountain, Nye County, Nevada, for the disposal of spent nuclear fuel and high-level radioactive waste, in accordance with the Nuclear Waste Policy Act of 1982, as amended (NWPA) (42 U.S.C. § 10101 *et seq.*), the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. § 4321 *et seq.*), the Council on Environmental Quality regulations that implement the procedural provisions of NEPA (40 CFR Parts 1500–1508), and the DOE procedures for implementing NEPA (10 CFR Part 1021). DOE invites Federal, State, and local agencies, Native American tribal organizations, and other interested parties to participate in determining the scope and content of the EIS.

The NWPA directs DOE to evaluate the suitability of the Yucca Mountain site in southern Nevada as a potential site for a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste. If the Secretary of Energy determines that the Yucca Mountain site is suitable, the Secretary may then recommend that the President approve the site for development of a repository. Under the NWPA, any such recommendation shall be considered a major Federal action and must be accompanied by a final environmental impact statement. Accordingly, DOE is preparing this EIS in conjunction with any potential DOE recommendation regarding the development of a repository at Yucca Mountain.

The NWPA provides that the environmental impact statement need not consider the need for a repository, the alternatives to geologic disposal, or alternative sites to the Yucca Mountain site. Therefore, this environmental impact statement will evaluate a proposal to construct, operate, and eventually close a repository at Yucca Mountain. The EIS will evaluate reasonable alternatives for implementing such a proposal in accordance with the NWPA.

The NWPA also provides that the Nuclear Regulatory Commission shall, to the extent practicable, adopt DOE's EIS in connection with any subsequent construction authorization and license that the Commission issues to DOE for a repository. The EIS process is scheduled to be completed in September 2000 and is separate from the licensing process that would be initiated by any submission of a license application by DOE to the Commission in June 2001.

The EIS will be prepared over a five-year period in conjunction with DOE's separate but parallel site suitability evaluation and potential license application. DOE is beginning the EIS process early to ensure that the appropriate data gathering and tests are performed to adequately assess potential environmental impacts, and to allow the public sufficient time to consider this complex program and to provide input.

DATES: DOE invites and encourages comments and suggestions on the scope of the EIS to ensure that all relevant environmental issues and reasonable alternatives are addressed. Public scoping meetings are discussed below in the **SUPPLEMENTARY INFORMATION** section. DOE will carefully consider all comments and suggestions received during the 120-day public scoping period that ends on December 5, 1995. Comments and suggestions received after the close of the public scoping period will be considered to the extent practicable.

ADDRESSES: Written comments on the scope of this EIS, requests to pre-register to speak at any of the public scoping meetings, questions concerning the proposed action and EIS, or requests for additional information on the EIS, should be directed to: Wendy R. Dixon, EIS Project Manager, Yucca Mountain Site Characterization Office, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 101 Convention Center Drive Suite P–110, MS 010, Las Vegas, NV 89109, Telephone: 1–800–967–3477, Facsimile: 1–800–967–0739.

FOR FURTHER INFORMATION CONTACT: For more information about this EIS, please contact Wendy R. Dixon at the address, above. For information on DOE's NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 1–202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Public Participation

All interested persons, including Federal agencies, Native American tribal organizations, State and local government agencies, public interest groups, transportation interests, industry and utility organizations, regulators, and the general public are encouraged to take part in the EIS scoping process. Because of the anticipated public interest and national scope of the program, DOE will provide several methods for people to express their views and provide comments, request additional information and copies of the EIS, or pre-register to speak at the scoping meetings. Comments submitted by any of these means will become part of the official record for scoping.

Written Comments and Toll-Free Facsimile Number

Written comments and requests may be mailed or sent by facsimile to Wendy R. Dixon at the address or toll-free facsimile number listed above

Toll-Free Telephone Line

All interested parties are invited to record their comments or request information on the scope of the EIS by calling a toll-free telephone number, 1–800–967–3477. Throughout the public scoping period, this number will be staffed between the hours of 9 a.m. to 9 p.m. Eastern Standard Time, Monday through Friday. During other hours, calls will be forwarded to an answering machine.

Electronic Mail

Comments and information requests may be submitted by electronic mail to the following Internet electronic mail address: ymp—eisr@notes.ymp.gov.

Internet

The public may access the Notice of Intent, request information, and provide comments via the World Wide Web at the following Uniform Resource Locator address: http://www.ymp.gov, under the listing *Environmental Impact Statement (EIS)* on the Yucca Mountain Project Home Page. When available, the EIS and other selected technical documents may also be accessed at this Uniform Resource Locator address.

Scoping Meetings

DOE will hold 15 public scoping meetings in cities throughout the United States to provide and discuss information and to receive comments on the scope of this EIS. Table 1 at the end of this Notice lists the specific locations, dates, and times for each scoping meeting. Persons wishing to speak at any of these meetings can pre-register up to two days before the meeting by: (1) Calling the toll-free telephone number 1–800–967–3477, (2) writing to Wendy R. Dixon at the address listed above, or (3) sending their request to pre-register by facsimile or electronic mail, as identified above.

Persons wishing to speak who have not registered in advance can register at each meeting. These ''walk-in registrants'' will be accommodated to the extent practicable, following those persons who have pre-registered. Only one spokesperson per organization, group, or agency may present comments on its behalf. Oral statements will be limited to ten minutes; however, written comments can be of any length and submitted any time during the scoping period.

Each of the 15 public scoping meetings will have either a morning or afternoon session, and an evening session. Morning sessions will begin at 8:30 a.m. and end at 12:30 p.m., and afternoon sessions will begin at 12:00 p.m. and end at 4:00 p.m. Evening sessions will begin at 6:00 p.m. and end about 10:00 p.m. If additional time is required in order to accommodate all speakers wishing to present oral comments, the meeting facilitator will consult with the audience and DOE staff and determine whether to continue the meeting past the scheduled ending time. A court reporter will record all portions of the scoping meetings, and transcripts will be prepared and made a part of the official record of the scoping process.

Each session will have an introductory presentation, a question and answer period, and a public comment segment. A facilitator will begin the introductory presentation of each session by explaining the scoping meeting format. DOE staff will provide a brief description (lasting approximately 30–45 minutes) of the repository program, the EIS, and the scoping process. The question and answer period (lasting approximately 45 minutes) will provide members of the public an opportunity to ask questions and discuss various aspects of the repository and to obtain additional information that may be useful in formulating opinions and comments. Each member of the public will be allowed five minutes to ask questions. The meeting facilitator may allow extra time for additional questions depending on the number of people present who have indicated their desire to participate during the question and answer period. The meeting facilitator will begin the public comment portion of the scoping meeting after the question and answer period. At this time, members of the public will provide their comments on the scope of the EIS.

Each public scoping meeting also will have a separate information room containing exhibits and informational handouts about the repository program and the EIS. DOE and contractor staff will be available throughout the day to answer questions in an informal setting. A table with blank comment cards will also be available for people to privately prepare and submit written comments on the scope of the EIS. These comment cards will be included in the formal record of each scoping meeting.

Subsequent Document Preparation

Results of scoping, including the transcripts from the question and answer periods and public comment segments, and all other oral and written comments received by DOE, will be summarized in the EIS Implementation Plan. This Plan will guide the preparation of the EIS, and will describe the planned scope and content of the EIS, record the results of the scoping process, and contain EIS activity schedules. As a ''living document,'' the Implementation Plan may be amended as needed to incorporate changes in schedules, alternatives, or EIS content.

The Implementation Plan will be available to the public for information purposes as soon as possible after the close of the public scoping process, and before issuing the Draft EIS. The Implementation Plan and the transcripts from the public scoping meetings will be available for inspection at major DOE facilities and public reading rooms in Nevada and across the country, as identified at the end of this Notice. Copies of the Implementation Plan, as well as the Draft and Final EIS and related comments, will be provided to anyone requesting copies of these documents.

Availability of the Draft EIS for public review, and the locations and times of public hearings on the Draft EIS, will be announced in the **Federal Register** and through local media (approximately in the Fall of 1998). After considering all public comments received on the Draft EIS, DOE will prepare and issue a Final EIS, followed thereafter by a Record of Decision (approximately in the Fall of 2000).

Background

Spent nuclear fuel [1] has been and is being generated and stored in the United States as part of commercial power generation. The accumulation of spent nuclear fuel from commercial power reactor operations in the United States probably will continue for several decades. There are 109 operating commercial facilities at 75 sites in 34 States where spent nuclear fuel is stored. By the year 2035, total spent nuclear fuel from power reactors will amount to about 85,000 metric tons of heavy metal (i.e., metric tons of heavy metal, typically uranium, without materials such as cladding, alloy and structural materials) (MTHM).

Spent nuclear fuel and high-level radioactive waste [2], generated from

[1] Spent nuclear fuel is fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

[2] High-level radioactive waste is the highly radioactive material resulting from reprocessing of spent nuclear fuel. It includes liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient

Continued

DOE's national atomic energy defense and research activities, are primarily located at DOE's Hanford Reservation, the Savannah River Site, and the Idaho National Engineering Laboratory. Other spent nuclear fuel, either currently in DOE possession or which may come under DOE possession, includes material from foreign research reactors, approximately 29 domestic university reactors, 5 non-DOE research reactors, and 4 ''special case'' reactors at non-DOE locations.

In 1982, in response to the continued accumulation of spent nuclear fuel and high-level radioactive waste, Congress passed the NWPA. The purpose of the NWPA was to establish geologic repositories that would provide reasonable assurance that the public and the environment would be adequately protected from the hazards posed by these materials. In 1987, Congress amended the NWPA and directed DOE to evaluate the suitability of only the Yucca Mountain site in southern Nevada as a potential site for the first repository. If, based on this evaluation, the Secretary of Energy determines that the Yucca Mountain site is suitable, the Secretary may then recommend that the President approve the site for development of a repository.

Under the NWPA, DOE is prohibited from emplacing more than 70,000 MTHM of spent nuclear fuel and high-level radioactive waste in the first repository until such time as a second repository is in operation. The current planning basis calls for 63,000 MTHM of commercial spent nuclear fuel to be disposed of in the first repository, proposed to be located at the Yucca Mountain site. The planning basis also calls for the disposal of 7,000 MTHM equivalent of DOE-owned spent nuclear fuel and high-level radioactive waste in this first repository.

Proposed Action

If the site were found to be suitable, the proposed action would be to construct, operate, and eventually close a repository at Yucca Mountain for the geologic disposal of up to 70,000 MTHM of commercial and DOE-owned spent nuclear fuel and high-level radioactive waste. Spent nuclear fuel and high-level radioactive waste would be disposed of in the repository in a subsurface configuration that would ensure its long-term isolation from the human environment. Repository construction, operation, and closure would be governed by the Nuclear Regulatory Commission's licensing process.

Construction would begin if the Nuclear Regulatory Commission authorizes construction of the repository. Surface facilities would be designed and constructed to receive, and prepare for disposal, spent nuclear fuel and high-level radioactive waste that would arrive in transportation casks by highway and by rail. Capability to treat or package the secondary wastes generated during disposal operations would also be provided. Subsurface facilities would be designed and constructed for emplacement of spent nuclear fuel and high-level radioactive waste in disposal drifts. Subsurface facilities would primarily include access ramps, ventilation systems, disposal drifts, and equipment alcoves.

Disposal operations would begin once the Nuclear Regulatory Commission issues a license allowing receipt of spent nuclear fuel and high-level radioactive waste. Disposal operations would be expected to last up to 40 years, depending on shipment schedules. Disposal drifts would continue to be constructed during this time period as necessary. Spent nuclear fuel assemblies,[3] and canisters containing assemblies[4] or vitrified (i.e., solidified) high-level radioactive waste[5] would be shipped to the repository in transportation casks that meet the Nuclear Regulatory Commission and U.S. Department of Transportation requirements for shipping by truck or rail[6]. The assemblies would be removed from the transportation casks, which would be placed back into service after decontamination and maintenance or after necessary repairs were completed. Canisters and assemblies would be transferred to a ''hot'' cell—a room where remotely-controlled equipment would be used to place the material in disposal containers. These ''waste packages'' (i.e., assemblies and canisters in disposal containers) would be transported underground in a transportation vehicle having radiation shielding for worker protection. Monitoring equipment, which would either be placed in selected drifts or would be mobile remote-sensing devices, would monitor performance of waste packages and aspects of the local repository geology.

The closure/post-closure period would begin after the Nuclear Regulatory Commission amends the license to authorize permanent closure. Underground equipment would be removed, repository openings would be backfilled and sealed, and the surface facilities would be decontaminated, decommissioned, and dismantled or converted to other uses. Institutional controls, such as permanent markers and monuments, would be designed and constructed to last thousands of years and discourage human activities that could compromise the waste isolation capabilities of the repository.

The disposal and closure/post-closure activities would be designed and implemented so that the combination of engineered (i.e., waste package and any backfill) and natural (geologic system) barriers would isolate the spent nuclear fuel and high-level radioactive waste. The combination of barriers would meet a standard to be specified by the Environmental Protection Agency, which has been entrusted to develop a radiation release standard pursuant to Section 801 of the Energy Policy Act of 1992 (42 U.S.C. § 10141 note); individual barriers would perform according to Nuclear Regulatory Commission requirements, including its performance objectives at 10 CFR 60.113. The engineered barrier must provide substantially complete containment of spent nuclear fuel and high-level radioactive waste for between 300 and 1,000 years by using corrosion resistant materials in the waste package.

Beyond 1,000 years, continued isolation would be assisted by features that would limit the rate at which radioactive components of the waste would be released. The rate of release would be substantially affected by natural conditions, the heat generation rate of spent nuclear fuel and high-level radioactive waste (i.e., thermal load), and its rate of heat dissipation. First, different thermal loads would affect directly the internal and external waste package temperatures, thereby affecting the corrosion rate and integrity of the waste package. Second, the heat would affect the geochemistry, hydrology, and mechanical stability of the disposal drifts, which in turn would influence the flow of groundwater and the

concentrations and other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

[3] A fuel assembly is made up of fuel elements held together by plates and separated by spacers attached to the fuel cladding.

[4] Under one scenario, spent nuclear fuel assemblies would be sealed in a multi-purpose canister that would then be inserted into separate casks/containers for storage, transportation, and disposal. Other canisters are available and include single-purpose systems, which require transferring of individual assemblies from one cask/container to another for storage, transport, and disposal. Another alternative would be dual-purpose systems which require storing and transporting individual assemblies in one cask and disposing of them in another container.

[5] Vitrified high-level radioactive waste would be sealed in canisters suitable for transport in a truck or train cask.

[6] Barges may also be used for intermodal shipments of spent nuclear fuel and high-level radioactive waste from generator sites to nearby locations for transfer to truck and rail.

transport of radionuclides from the engineered and natural barrier systems to the environment. Therefore, the long-term performance of the repository would be managed by appropriately spacing the waste packages within disposal drifts and the distances between disposal drifts, and by selectively placing spent nuclear fuel and high-level radioactive waste packages to account for their individual heat generation rates.

Alternatives

DOE has preliminarily identified for analysis in the EIS a full range of reasonable implementation alternatives for the construction, operation, and closure/post-closure of a repository at Yucca Mountain. These implementation alternatives are based on thermal load objectives and include High Thermal Load, Intermediate Thermal Load, and Low Thermal Load alternatives.

Under each implementation alternative, DOE will evaluate different spent nuclear fuel and high-level radioactive waste packaging and transportation options. DOE anticipates that these options would produce the broadest range of potential configurations for both surface facilities and possible operational and disposal conditions at the repository. Evaluation of these options will identify the full range of reasonably foreseeable impacts to human health and the environment associated with each implementation alternative.

High Thermal Load Alternative

Under the High Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would generate the upper range of repository temperatures while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the emplacement density would likely be greater than 80 MTHM per acre. This alternative would represent the highest repository thermal loading based on available information and expected test results.

Intermediate Thermal Load Alternative

Under the Intermediate Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would generate an intermediate range of repository temperatures (compared to the High and Low Thermal Load alternatives) while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the disposal density would likely range between 40 to 80 MTHM per acre.

Low Thermal Load Alternative

Under the Low Thermal Load implementation alternative, spent nuclear fuel and high-level radioactive waste would be disposed in an underground configuration that would provide the lowest potential repository thermal loading (based on available information and expected test results) while meeting performance objectives to isolate the material in compliance with Environmental Protection Agency standards and Nuclear Regulatory Commission requirements. Under this alternative, the disposal density would likely be less than 40 MTHM per acre.

Packaging Options

As part of each implementation alternative, two packaging options would be evaluated. Under Option 1, spent nuclear fuel assemblies would be packaged and sealed in multi-purpose canisters at the generator sites prior to being transported to the repository in Nuclear Regulatory Commission-certified casks. High-level radioactive waste also would be packaged and sealed in canisters prior to shipment in similar casks. Under Option 2, spent nuclear fuel assemblies (without canisters) and sealed canisters of high-level radioactive waste would be transported to the repository in Nuclear Regulatory Commission-certified casks. Under both options, assemblies and canisters with intact seals would be removed from the casks and placed in disposal containers at the repository.

DOE recognizes that it is likely that a mix of spent nuclear fuel assemblies and canisters (and canister systems) of spent nuclear fuel and vitrified high-level radioactive waste would arrive at the repository during disposal operations. However, since the specific mix is speculative, the above packaging options were chosen to produce the broadest range of potential configurations for both surface facilities and possible operational and disposal conditions at the repository. These options were also selected to reflect the potential range of exposures to workers and the public at the generator sites, along transportation routes, and at the repository from the packaging, transport, and disposal of spent nuclear fuel and high-level radioactive waste.

Transportation

As part of each implementation alternative, two national transportation options and three regional (i.e., within the State of Nevada) transportation options would be evaluated. These options would be expected to result in the broadest range of operating conditions relevant to potential impacts to human health and the environment.

In a national context, the first option would consist of shipping all spent nuclear fuel and high-level radioactive waste by truck, from the generator site to the repository.

The second national option would consist of shipment by rail, except from those generator sites (as many as 19) that may not have existing capabilities to load and ship rail casks. For such sites, the spent nuclear fuel would be transported by truck to the repository, or to a facility near the nuclear power plant where it would be transferred to rail cars for shipment to the repository.

In a regional context, there are three transportation options: two of these options apply to shipments that would arrive in Nevada by rail, and the third applies to shipments that would arrive in Nevada by legal weight truck.[7]

The first regional transportation option would consist of several rail corridors to the repository. The rail corridor option would involve identifying and applying siting criteria, based on engineering considerations (e.g., topography and soils), potential land use restrictions (e.g., wilderness areas and existing conflicting uses), and any other factors identified from the scoping process.

The second regional transportation option would involve the use of heavy haul truck[8] routes to the repository. The heavy haul option would include the construction and use of an intermodal transfer facility to receive shipments that would arrive in Nevada by rail; the intermodal transfer facility would be located at the beginning of the heavy haul route. The heavy haul option would include any need to improve the local transportation infrastructure.

The third regional transportation option would involve legal weight truck shipments directly to the repository. Under this option, a transfer facility would not be required.

No Action

The No Action alternative would evaluate termination of site

[7] A legal weight truck consists of a tractor, semi-trailer, and loaded cask, with a maximum gross weight of 80,000 pounds.

[8] A heavy haul truck consists of a tractor, semi-trailer, and loaded cask, with a gross weight in excess of 129,000 pounds.

characterization activities at Yucca Mountain and the continued accumulation of spent nuclear fuel and high-level radioactive waste at commercial storage sites and DOE facilities. Spent nuclear fuel and high-level radioactive waste would continue to be managed for the foreseeable future at existing commercial storage sites and DOE facilities located in 34 States. The No Action alternative, although contrary to the Congressional desire to provide a permanent solution for isolation of the Nation's spent nuclear fuel and high-level radioactive waste, provides a baseline against which the implementation alternatives can be compared.

At the Yucca Mountain site, the surface facilities, excavation equipment, and other support facilities would be dismantled and removed for reuse or recycling, or would be disposed of in solid waste landfills. Disturbed surface areas would be reclaimed and excavated openings to the subsurface would be sealed and backfilled.

At commercial reactors, spent nuclear fuel would continue to be generated and stored in either water pools or in canisters, until storage space at individual reactors becomes inadequate, at which time reactor operations would cease. DOE-owned spent nuclear fuel and high-level radioactive waste would continue to be managed at three primary sites—the Hanford Reservation, Savannah River Site, and the Idaho National Engineering Laboratory.

Environmental Issues To Be Examined in the EIS

This EIS will examine the site-specific environmental impacts from construction, operation, and eventual closure of a repository for spent nuclear fuel and high-level radioactive waste disposal at Yucca Mountain, Nevada. Transportation-related impacts of the alternatives will also be analyzed. Through internal discussion and outreach programs with the public, DOE is aware of many environmental issues related to the construction, operation, and closure/post-closure phases of such a repository. The issues identified here are intended to facilitate public scoping. The list is not intended to be all-inclusive or to predetermine the scope of the EIS, but should be used as a starting point from which the public can help DOE define the scope of the EIS.

- Radiological and non-radiological releases. The potential effects to the public and on-site workers from radiological and nonradiological releases;
- Public and Worker Safety and Health. Potential health and safety impacts (e.g., injuries) to on-site workers during the unloading, temporary surface storage, and underground emplacement of waste packages at Yucca Mountain;
- Transportation. The potential impacts associated with national and regional shipments of spent nuclear fuel and high-level radioactive waste from reactor sites and DOE facilities to the Yucca Mountain site will be assessed. Regional transportation issues include: (a) technical feasibility, (b) socioeconomic impacts, (c) land use and access impacts, and (d) impacts of constructing and operating a rail spur, a heavy haul route, and/or a transfer facility;
- Accidents. The potential impacts from reasonably foreseeable accidents, including any accidents with low probability but high potential consequences;
- Criticality. The likelihood that a self-sustaining nuclear chain reaction could occur and its potential consequences;
- Waste Isolation. Potential impacts associated with the long-term performance of the repository;
- Socioeconomic Conditions. Potential regional (i.e., in Nevada) socioeconomic impacts to the surrounding communities, including impacts on employment, tax base, and public services;
- Environmental Justice. Potential for disproportionately high and adverse impacts on minority or low-income populations;
- Pollution Prevention. Appropriate and innovative pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or significantly reduce use of energy, water, hazardous substances, and to minimize environmental impacts;
- Soil, Water, and Air Resources. Potential impacts to soil, water quality, and air quality;
- Biological Resources. Potential impacts to plants, animals, and habitat, including impacts to wetlands, and threatened and endangered species;
- Cultural Resources. Potential impacts to archaeological/historical sites, Native American resources, and other cultural resources;
- Cumulative impacts from the proposed action and implementing alternatives and other past, present, and reasonably foreseeable future actions;
- Potential irreversible and irretrievable commitment of resources.

Under the No Action alternative, potential environmental effects associated with the shutdown of site characterization activities at Yucca Mountain will be estimated. Potential environmental effects from the continued accumulation of spent nuclear fuel and high-level radioactive waste at commercial reactors and DOE sites will be addressed by summarizing previous relevant environmental analyses and by performing new analyses of representative sites, as appropriate. At the Yucca Mountain site, the potential environmental consequences from the reclamation of disturbed surface areas, and the sealing of excavated openings following the dismantlement and removal of facilities and equipment, will be quantified. These analyses would be similar in level of detail to the analyses of the implementing alternatives. At the commercial reactor and DOE sites, the potential environmental consequences will be addressed in terms of risk to the environment and the public from long-term management of spent nuclear fuel and high-level radioactive waste. In addition, the loss of storage capacity, the need for additional capacity, and their potential consequences to continued reactor operations, will be described.

Consultations With Other Agencies

The NWPA requires DOE to solicit comments on the EIS from the Department of the Interior, the Council on Environmental Quality, the Environmental Protection Agency, and the Nuclear Regulatory Commission (42 U.S.C. § 10134(a)(1)(D)). DOE also intends to consult with the Departments of the Navy and Air Force and will solicit comments from other agencies, the State of Nevada, affected units of local government, and Native American tribal organizations, regarding the environmental issues to be addressed by the EIS.

Relationship to Other DOE NEPA Reviews

DOE is preparing or has completed other NEPA documents that may be relevant to the Office of Civilian Radioactive Waste Management Program and this EIS. If appropriate, this EIS will incorporate by reference and update information taken from these other NEPA documents. These documents (described below) are available for inspection by the public at the DOE Freedom of Information Reading Room (1E–190), Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. and will be made available in Nevada at locations to be announced at the public scoping meetings. These documents include the following:

- *Environmental Assessment, Yucca Mountain Site,* Nevada Research and

Development Area, Nevada, DOE/RW–0073, 1986.

• *Environmental Assessment for a Monitored Retrievable Storage Facility,* DOE/RW–0035, 1986.

• *Environmental Impact Statement for a Multi-Purpose Canister System for the Management of Civilian and Naval Spent Nuclear Fuel.* The Notice of Intent was published on October 24, 1994 (59 FR 53442). The scoping process for this EIS has been completed and an Implementation Plan is being prepared. The Draft EIS is scheduled to be issued for public review in late 1995.

• *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement* [Final EIS issued April 1995 (DOE/EIS–0203–F); Record of Decision (60 FR 28680–96, June 1, 1995)]. This EIS analyzes the potential environmental consequences of managing DOE's inventory of spent nuclear fuel over the next 40 years. The Nevada Test Site was considered but was not selected as a DOE spent nuclear fuel management site.

• *Waste Management Programmatic Environmental Impact Statement* (formerly Environmental Management Programmatic EIS). A revised Notice of Intent was published January 24, 1995 (60 FR 4607). This Programmatic EIS will address impacts of potential DOE waste management actions for the treatment, storage, and disposal of waste. The Draft EIS is scheduled to be issued for public review in September 1995.

• *Environmental Impact Statement for a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* [Notice of Intent published October 21, 1993 (58 FR 54336)]. The draft EIS was issued for public review in March 1995 (DOE/EIS–0218D). This EIS addresses the potential environmental impacts of the proposed policy's implementation. Under the proposed policy, the United States could accept up to 22,700 foreign research reactor spent nuclear fuel elements over a 10–15 year period.

• *Environmental Impact Statement on the Transfer and Disposition of Surplus Highly Enriched Uranium* (formerly part of the Programmatic Environmental Impact Statement for Long-Term Storage and Disposition of Weapons-Usable Fissile Materials). The Notice of Intent was issued April 5, 1995 (60 FR 17344). This EIS will address disposition of DOE's surplus highly enriched uranium to support the President's Nonproliferation Policy. The Draft EIS is scheduled to be issued in September 1995.

• *Programmatic Environmental Impact Statement for Storage and Disposition of Weapons-Usable Fissile Materials* [Notice of Intent published June 21, 1994 (59 FR 31985)]. This Programmatic EIS will evaluate alternatives for long-term storage of all weapons-usable fissile materials (primarily plutonium and highly enriched uranium retained for strategic purposes—not surplus) and disposition of surplus weapons-usable fissile materials (excluding highly enriched uranium), so that risk of proliferation is minimized. The Nevada Test Site is a candidate storage site.

• *Tritium Supply and Recycling Programmatic Environmental Impact Statement.* A revised Notice of Intent was published October 28, 1994 (59 FR 54175), and the Draft Programmatic EIS was issued in March 1995 (60 FR 14433, March 17, 1995). Public hearings on the Draft Programmatic EIS were held in April 1995, and a Final Programmatic EIS is scheduled for October 1995. This EIS addresses how to best assure an adequate tritium supply and recycling capability. The Nevada Test Site is an alternative site for new tritium supply and recycling facilities.

• *Stockpile Stewardship and Management Programmatic Environmental Impact Statement.* A Notice of Intent was published June 14, 1995 (60 FR 31291). A prescoping workshop was held on May 19, 1995, and scoping meetings are scheduled to be held during July and August 1995. This Programmatic EIS will evaluate proposed future missions of the Stockpile Stewardship and Management Program and potential configuration (facility locations) of the nuclear weapons complex to accomplish the Stockpile Stewardship and Management Program missions. The Nevada Test Site is an alternative site for potential location of new or upgraded Stockpile Stewardship and Management Program facilities.

• *Site-Wide Environmental Impact Statement for the Nevada Test Site* [Notice of Intent published August 10, 1994 (59 FR 40897)]. This EIS will address resource management alternatives for the Nevada Test Site to support current and potential future missions involving defense programs, research and development, waste management, environmental restoration, infrastructure maintenance, transportation of wastes, and facility upgrades and alternative uses. The public scoping process has been completed, and the Implementation Plan was issued in July 1995. The Draft EIS is scheduled to be issued for public review in September 1995.

• *Environmental Impact Statement for the Continued Operation of the Pantex Plant and Associated Storage of Nuclear Weapon Components* [Notice of Intent published May 23, 1994 (59 FR 26635); an amended Notice of Intent published June 23, 1995 (60 FR 32661)]. This EIS will address the potential environmental impacts of the continued operation of the Pantex Plant, which includes near- to mid-term foreseeable activities and the nuclear component storage activities at other DOE sites associated with nuclear weapon disassembly operations at the Pantex Plant. The Nevada Test Site is being considered as an alternative site for relocation of interim plutonium pit storage.

Public Reading Rooms

Copies of the Implementation Plan, and the Draft and Final EISs, will be available for inspection during normal business hours at the following public reading rooms. DOE may establish additional information locations and will provide an updated list at the public scoping meetings.

Albuquerque Operations Office, National Atomic Museum, Bldg. 20358, Wyoming Blvd., S.E., Kirtland Air Force Base, Albuquerque, NM 87117. Attn: Diane Leute (505) 845–4378

Atlanta Support Office, U.S. Dept. of Energy, Public Reading Room, 730 Peachtree Street, Suite 876, Atlanta, GA 30308–1212. Attn: Nancy Mays/Laura Nicholas (404) 347–2420

Bartlesville Project Office/National Institute for Petroleum and Energy Research, Library, U.S. Dept. of Energy, 220 Virginia Avenue, Bartlesville, OK 74003. Attn: Josh Stroman (918) 337–4371

Bonneville Power Administration, U.S. Dept. of Energy, BPA–C–KPS–1, 905 N.E. 11th Street, Portland, OR 97208. Attn: Sue Ludeman (503) 230–7334

Chicago Operations Office, Document Dept., University of Illinois at Chicago, 801 South Morgan Street, Chicago, IL 60607. Attn: Seth Nasatir (312) 996–2738

Dallas Support Office, U.S. Dept. of Energy, Public Reading Room, 1420 Mockingbird Lane, Suite 400, Dallas, TX 75247. Attn: Gailene Reinhold (214) 767–7040

Fernald Area Office, U.S. Dept. of Energy, Public Information Room, FERMCO, 7400 Willey Road, Cincinnati, OH 45239. Attn: Gary Stegner (513) 648–3153

Headquarters Office, U.S. Dept. of Energy, Room 1E–190, Forrestal Bldg.,

1000 Independence Avenue, S.W., Washington, D.C. 20585. Attn: Gayla Sessoms (202) 586–5955

Idaho Operations Office, Idaho Public Reading Room, 1776 Science Center Dr., Idaho Falls, ID 83402. Attn: Brent Jacobson (208) 526–1144

Kansas City Support Office, U.S. Dept. of Energy, Public Reading Room, 911 Walnut Street, 14th Floor, Kansas City, MO 64106. Attn: Anne Scheer (816) 426–4777

Office of Civilian Radioactive Waste Management National Information Center, 600 Maryland Avenue, S.W., Suite 760, Washington, D.C. 20024. Attn: Paul D'Anjou (202) 488–6720

Oak Ridge Operations Office, U.S. Dept. of Energy, Public Reading Room, 55 South Jefferson Circle, Room 112, Oak Ridge, TN 37831–8510. Attn: Amy Rothrock (615) 576–1216

Oakland Operations Office, U.S. Dept. of Energy, Public Reading Room, EIC, 8th Floor, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208. Attn: Laura Noble (510) 637–1762

Pittsburgh Energy Technology Center, U.S. Dept. of Energy, Bldg. 922/M210, Receiving Department, Building 166, Cochrans Mill Road, Pittsburgh, PA 15236–0940. Attn: Ann C. Dunlap (412) 892–6167

Richland Operations Office, U.S. Dept. of Energy, Public Reading Room, 100 Sprout Rd., Room 130 West, Mailstop H2–53, Richland, WA 99352. Attn: Terri Traub (509) 376–8583

Rocky Flats Field Office, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030. Attn: Nancy Ben (303) 469–4435

Savannah River Operations Office, Gregg-Graniteville Library, University of S. Carolina-Aiken, 171 University Parkway, Aiken, SC 29801. Attn: James M. Gaver (803) 725–2889

Southeastern Power Administration, U.S. Dept. of Energy, Legal Library, Samuel Elbert Bldg., 2 South Public Square, Elberton, GA 30635–2496. Attn: Joel W. Seymour/Carol M. Franklin (706) 213–3800

Southwestern Power Administration, U.S. Dept. of Energy, Public Reading Room, 1 West 3rd, Suite 1600, Tulsa, OK 74103. Attn: Marti Ayers (918) 581–7426

Strategic Petroleum Reserve Project Management Office, U.S. Dept. of Energy, SPRPMO/SEB Reading Room, 900 Commerce Road East, New Orleans, LA 70123. Attn: Ulysess Washington (504) 734–4243

Yucca Mountain Science Centers

Yucca Mountain Science Center, U.S. 95—Star Route 374, Beatty, NV 89003. Attn: Marina Anderson (702) 553–2130

Yucca Mountain Science Center, 4101–B Meadows Lane, Las Vegas, NV 89107. Attn: Melinda D'ouville (702) 295–1312

Yucca Mountain Science Center, 1141 South Hwy. 160, Pahrump, NV 89041. Attn: Lee Krumm (702) 727–0896

TABLE 1.—SCOPING MEETINGS

Location of scoping meeting	Dates/times [1]
Pahrump Community Center, 400 N. Hwy. 160, Pahrump, NV 89048	Tuesday, August 29, 1995, morning/evening sessions.
Boise Centre on the Grove, 850 W. Front St., Boise, ID 83702	Wednesday, September 6, 1995, morning/evening sessions.
Lawlor Events Center, University of Nevada-Reno Campus, Reno, NV 89667.	Friday, September 8, 1995, morning/evening sessions.
University of Chicago, Downtown MBA Center, 450 N. Cityfront Plaza Drive, Chicago, IL 60611.	Tuesday, September 12, 1995, morning/evening sessions.
Cashman Field, 850 Las Vegas Blvd. North, Las Vegas, NV 89101	Friday, September 15, 1995, morning/evening sessions .
Denver Convention Complex, 700 14th Street, Denver, CO 80202	Tuesday, September 19, 1995, afternoon/evening sessions.
Sacramento Public Library, 828 I Street, Sacramento, CA 95814	Thursday, September 21, 1995, afternoon/evening sessions.
Arlington Community Center, 2800 South Center Street, Dallas, TX 76004.	Tuesday, September 26, 1995, afternoon/evening sessions.
Caliente Youth Center, Highway 93, Caliente, NV 89008	Thursday, September 28, 1995, morning/evening sessions.
Hilton Inn, 150 West 500 South, Salt Lake City, UT 84111	Thursday, October 5, 1995, afternoon/evening sessions.
Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Rd., Linthicum (near Baltimore), MD 21090.	Wednesday, October 11, 1995, morning/evening sessions.
Russell Sage Conference Center, 45 Ferry St., Troy (Albany), NY 12180.	Friday, October 13, 1995, afternoon/evening sessions.
Georgia International Convention Center, 1902 Sullivan Road, College Park (Atlanta), GA 30337.	Tuesday, October 17, 1995, morning/evening sessions.
Penn Valley Community College, 3201 S.W. Trafficway, Kansas City, MO 64111.	Friday, October 20, 1995, afternoon/evening sessions.
Tonopah Convention Center, 301 Brougher, Tonopah, NV 89049	Tuesday, October 24, 1995, morning/evening sessions.

[1] Session times are as follows: Morning (8:30 a.m.–12:30 p.m.), Afternoon (12:00 a.m.–4:00 p.m.), Evening (6:00 p.m.–10:00 p.m.).

Issued in Washington, D.C., this 1st day of August, 1995.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 95–19396 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Floodplain/Wetland Involvement Notification and Statement of Findings for a Proposed Removal Action at the Weldon Spring Site, St. Charles Co., Missouri

AGENCY: Office of Environmental Management, Department of Energy (DOE).

ACTION: Notice of floodplain/wetland involvement and statement of findings.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to conduct a removal action at the Weldon Spring site to remove radiologically contaminated soil from a vicinity property within a floodplain and wetland located within the heavily used State of Missouri Weldon Spring Conservation Area. The proposed action will eliminate any potential risk to the health of recreational users of the conservation area. In accordance with 10 CFR Part 1022, DOE has prepared a floodplain and wetlands assessment. The proposed action will be performed in a manner so as to avoid or minimize

potential harm to or within the floodplain and wetland. Because of the location of the contaminated soil, there is no practicable alternative to the location of this action within the floodplain and wetlands. Because of the potential risk to human health and the environment, the DOE has combined the Notice of Involvement with the Statement of Findings in this **Federal Register** Notice.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION CONTACT: Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (314) 441–8978.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring site is located in St. Charles County, Missouri, approximately 48 km (30 miles) west of St. Louis. As part of the overall cleanup of the Weldon Spring Site, the DOE is proposing to conduct a removal action at an area referred to as Vicinity Property 9 (VP 9). VP 9, which contains a small wetland area no larger than 1.5 acres, occurs within the 100-yr floodplain of the Missouri River, and is located within the heavily used State of Missouri Weldon Spring Conservation Area.

The proposed action is necessary to remove radioactively contaminated soils within VP 9 that poses a potential risk to the health of recreational users of the conservation area. Because of the urgency to conduct this removal and in order to optimize resources that are immediately available (i.e., equipment and crew currently are conducting bulk waste removal in the immediate vicinity) in the nearby quarry area, the DOE has waived the 15-day public comment period for this notice of involvement, as permitted under Section 1022.18c of 10 CFR 1022. Further information is available from the DOE at the address shown below.

In accordance with the DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR 1022), the DOE has prepared a floodplain and wetland assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the floodplain and wetland, and has determined that the proposed removal action will not impact floodplain storage. Impacts to the wetland will be temporary and will not affect long term wetland function. Further information on the floodplain and wetland assessments is available from the DOE at the address shown below.

The DOE proposes to remove radiologically contaminated soils from VP 9 by excavating soils to a depth of approximately 1 ft from an area of approximately 180 ft × 380 ft (1.5 acres) in size. Prior to excavation, vegetation at the area would be cleared by grubbing, and a temporary excavation equipment access ramp to VP 9 would be installed. Good engineering practices such as hay bales and silt fences would be employed to control sedimentation and erosion to nearby surface waters and adjacent floodplain areas. Excavation would be accomplished using standard excavation equipment (e.g., backhoe), and the contaminated soils would be transported to the Weldon Spring chemical plant area for treatment and subsequent disposal. Following completion of the proposed action, the equipment access ramp would be removed and all excavated areas would be backfilled with clean fill, graded to original contours, and revegetated with native species previously occurring at the site.

The no-action alternative with institutional controls was also evaluated. The no-action alternative is not acceptable because (1) The potential risk to human health from the contaminated soils would return in the event of loss of institutional control, (2) recreational activities at the conservation area would be disrupted, (3) potential risk to the environment would be largely unaffected by institutional controls, and (4) natural flood events could transport the contaminated soils to other portions of the floodplain and conservation area. Because of the potential risk to human health and to the environment, the DOE finds that there is no practicable alternative to the location of the removal action in the floodplain and wetland, and wishes to expedite the proposed removal of the contaminated soil and complete the removal action in as timely a manner as possible.

The proposed action would conform to applicable federal, state, and local floodplain and wetland protection standards. Impacts to the floodplain and wetland would be minimized by the avoidance (to the extent practicable) of adjacent floodplain and wetland areas, and through the use of good engineering practices for sediment and erosion control. No impacts are anticipated to the 100-yr floodplain of the Missouri River. The removal of contaminated soils from VP 9 would not impact the storage capacity of the Missouri River floodplain. No permanent structures that could displace flood storage capacity would be constructed as part of the proposed action. Potential impact to the wetland would be restricted to removal of hydrophytic vegetation species that would be replaced following completion of the removal action. Upon completion of the action, the equipment access ramp would be removed and the excavated area would be backfilled and graded to original contours to restore the pre-excavation flood-storage capacity of the area.

Robert W. Poe,

Assistant Manager for Environment, Safety, and Quality.

[FR Doc. 95–19395 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award Intent to Award Cooperative Agreement to Florida International University

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The U.S. Department of Energy announces that it is making a noncompetitive discretionary financial assistance award to Florida International University (FIU). The proposed cooperative agreement will provide funding in the estimated amount of $33,681,844, of which $22,000,000 will be contributed by DOE, over a 5-year period, to further develop and expand the Hemispheric Center for Environmental Technology (HCET). This proposed expansion will ultimately result in an increase to the scientific knowledge base in the area of environmental research (especially innovative environmental technology research and development), as well as provide increased opportunities for minority and other students to pursue advanced education in the environmental arena to help meet the challenges associated with solving current and future environmental related problems.

DATES: The anticipated project period of the proposed cooperative agreement is 60 months from the effective date of award which is proposed to be August 18, 1995. Any comments or inquiries should be submitted on or before August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration Attn: Phyllis Morgan, HR–561.22 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(A) and (B), that the application submitted by FIU is for an activity which is necessary to the satisfactory completion of, and is a continuation of an activity presently being funded by DOE for which competition for support would have a significant adverse effect on continuity or completion of the activity; the activity is being conducted by FIU using its own resources and DOE support of this activity will enhance the public benefits to be derived; and DOE knows of no other entity which is conducting or planning to conduct such an activity. The proposed effort is to: (1) Further develop and expand the environmental research and education capabilities at FIU's HCET; (2) initiate new, as well as continue to develop already existing, cooperative research efforts with other major universities (including a number of Historically Black Colleges and Universities); (3) increase the number of minority students pursuing undergraduate and graduate degrees in environmental related disciplines; and (4) increase the scientific knowledge base in the environmental arena, with particular emphasis on energy related environmental restoration and waste management technology research and development.

John M. Albers,

Contracting Officer, Office of Placement and Administration.

[FR Doc. 95–19394 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management 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 Advisory Committee meeting:

Name: Environmental Management Advisory Board, formerly Utilized Site Remedial Action Program Committee.

Date and Times: Tuesday, August 22, 1995 from 11:30 a.m. to 8 p.m. Wednesday, August 23, 1995 from 8 a.m. to 5 p.m.

Place: Holiday Inn Grand Island Resort & Conference Center, 100 Whitehaven Road, Grand Island, NY 14072, (716) 773–1111.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program including the Formerly Utilized Site Remedial Action Program.

Tentative Agenda

Tuesday, August 22, 1995

11:30 a.m. Chairman Opens Public Meeting
Overview of Activities and Findings from the June 20–21, 1995 Committee meeting in St.Louis, MO and Discussion of Remaining Issues
12:30 p.m.—Lunch
1:30 p.m.—Presentation on Applicability of Ore Recovery Methods as Potential Treatment Technology
2:00 p.m.—Presentation of Issue Papers —Residues; Land Use; Community Options on Land Use and EPA Standards Coordination
4:15 p.m.—Committee/ Public Discussion of Issues
5:00 p.m.—Break for Dinner
7:00 p.m.—Public Comment Session
8:00 p.m.—Meeting Adjourns

Wednesday, August 23, 1995

8:00 a.m.—Chairman Reconvenes Public Meeting
8:05 a.m.—Continued Discussion on Treatment and Land Use Issues
12:00 p.m.—Lunch
1:00 p.m.—Discussion of Potential Guiding Principles
3:30 p.m.—Committee Business
5:00 p.m.—Meeting Adjourns

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 Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 736–3282 and leave a message. Individuals may also register on August 22, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Chairman is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

Meeting minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 2, 1995

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–19393 Filed 8–4–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. RM95–8–000, RM 94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities; Notice of Public Scoping Meeting

August 1, 1995.

The Commission staff will hold a public meeting in this proceeding on September 8, 1995, to discuss the scope of the proposed environmental impact statement (EIS) as described in the Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking (NOPR) and Request for Comments on Environmental Issues (NOI) issued July 12, 1995. The meeting will begin at 10:00 a.m., in Hearing Room 1, at 810 First Street NE., Washington, D.C.

Any person who wishes to make a formal presentation should submit a request to the Secretary of the Commission no later than September 5, 1995. The presentation is to be limited to the environmental issues associated with the NOPR, and is not to be used as a forum to address the merits of the NOPR. Each request should include the time anticipated for the presentation and any special equipment requirements. Every effort will be made to accommodate requests to make presentations, but, depending on the number of requests received, each presentation may have to be limited to 5 minutes. To provide a more productive conference, those with similar views are encouraged to coordinate their efforts and choose one spokesperson to make a statement on behalf of the group. Also, speakers are encouraged to prepare written ''Executive Summaries'' for presentation at the September 8, 1995 meeting. An official transcript will be made of the public meeting to accurately record all comments.

Please take notice that all written scoping comments and relevant studies or reports on the proposed EIS still need to be filed with the Commission on or before August 11, 1995, as directed in the NOI. In addition, commenters are asked to submit their written comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (*i.e.*, MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

Send all written comments, diskettes, and requests to speak at the meeting to:

- Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426; and
- Refer to Docket Nos. RM95–8–000 and RM94–7–001.

Also send a copy of the written scoping comments to:

- Leon Lowery, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, Telephone: (202) 208–0919, Fax: (202) 208–0180.

All written comments will be available for public inspection or copying in the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C 20426, or call (202) 208–1371. All comments filed on diskettes will be available on the Commission Issuance Posting System (CIPS). CIPS is an electronic bulletin board service which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19337 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–647–000]

Crossroads Pipeline Company; Notice of Application for a Blanket Certificate

August 1, 1995.

Take notice that on July 28, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket No. CP95–647–000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Crossroads states that it was granted certificate authority to operate as a natural gas company subject to the Commission's Regulations pursuant to the Natural Gas Act in Docket No. CP94–342–000. Crossroads further states that as a natural gas company providing the interstate transportation of natural gas subject to regulation by the Commission, it will be required to engage in the routine activities of Subpart F. In addition, Crossroads states that it does not hold any outstanding budget-type certificates issued under § 157.7, it will comply with the terms, conditions, and procedures specified in subpart F, § § 157.201–257.218, there are currently no effective rate schedules which would apply to any interstate service authorized by § 157.210 or § 157.213, and there are no on-going storage field tests commenced under a budget-type certificate issued under § 157.7(d).

Any person desiring to be heard or to make any protest with reference to said application should on or before August 22, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Crossroads to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19338 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–400–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1995.

Take notice that on July 27, 1995, Distrigas of Massachusetts Corporation (DOMAC), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective September 1, 1995.

Second Revised Sheet No. 75
First Revised Sheet No. 75–A
First Revised Sheet No. 76
Original Sheet No. 76–A
First Revised Sheet No. 79
First Revised Sheet No. 80
Original Sheet No. 80–A

First Revised Sheet No. 83
First Revised Sheet No. 87
First Revised Sheet No. 92
First Revised Sheet No. 102
First Revised Sheet No. 105
First Revised Sheet No. 114
First Revised Sheet No. 122

DOMAC states that the purpose of this filing is to modify DOMAC's current rate caps to reflect the changed structure of the pipeline industry. Specifically, DOMAC proposes to replace the commodity rate caps in Rate Schedules FVSS, FLSS, FCSS and ISS with new commodity rate caps that reflect (i) the price of gas in the U.S. Gulf Coast supply region; (ii) the commodity cost of transporting that gas to New England; and (iii) the unused portion of the call payment rate cap. DOMAC also states that it proposes to replace the call payment rate cap in Rate Schedule FLSS with the identical call payment rate cap in Rate Schedule FVSS and to replace the commodity rate cap in Rate Schedule ISS with a new rate cap to reflect the 100% load factor equivalent of the rate caps in Rate Schedule FVSS and FLSS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such notices or protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19339 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–28–001]

K N Interstate Gas Transmission Co.; Notice of Second Refund Report Filing

August 1, 1995.

Take notice that on July 24, 1995, K N Interstate Gas Transmission Co. (KNI) filed its second refund report in the referenced docket. It is stated that the reported amounts were paid on July 21, 1995. KNI states that the refund report shows the Kansas ad valorem tax refund amounts refunded by first sellers subsequent to the First Refund Report and the allocation of those refund amounts to former jurisdictional customers.

KNI states that copies of the filing were served upon former jurisdictional customers of K N Energy, Inc. and pertinent state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19340 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–398–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1995.

Take notice that on July 27, 1995, Paiute Pipeline Company (Paiute) tendered for filing and acceptance as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets with a proposed effective date of July 10, 1995:

Second Revised Sheet No. 103
Second Revised Sheet No. 110

Paiute states that the purpose of this filing is to propose changes to Sections 14.1(g) and 14.3(a) of the Capacity Release provisions contained in the General Terms and Conditions of Paiute's FERC Gas Tariff. Paiute states that the changes are necessary to conform Paiute's tariff with the changes made in Order No. 577–A to the Commission's regulations governing pipeline capacity release mechanisms.

Paiute states that copies of the filing were served upon all of Paiute's customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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, 385.214). All such motions or protests should be filed on or before August 8, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19341 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM94–5–49–002 TM 95–4–49–002 (Not Consolidated)]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 1, 1995.

Take notice that on July 28, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing.

Williston Basin states that, in compliance with the Commission's June 18, 1995 Letter Order in Docket No. TM94–5–49–001 and the Commission's June 30, 1995, Order in Docket No. TM95–4–49–000, the revised tariff sheets reflect revised gas supply realignment surcharges based upon separate true-up mechanisms for Rate Schedules FT–1 and ST–1, respectfully. In addition, Williston Basin has revised the base rate unit cost for Rate Schedule IT–1 based on a throughput level of 7,354,757 Dth.

The proposed effective dates of the tariff sheets included in the filing are November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, July 1, 1994, August 1, 1994, October 1, 1994, November 1, 1994, February 1, 1995 and July 1, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 8, 1995. 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. Copies of this filing are

on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19342 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1357–000]

Wisconsin Electric Power Company, et al. Notice of Extension of Time

July 27, 1995.

Take notice that the time for filing responses to the notice issued July 25, 1995 (60 FR 39163, August 1, 1995), in this proceeding has been extended to and including August 28, 1995.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19372 Filed 8–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–021]

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

August 1, 1995.

Take notice that on July 25, 1995, Wyoming Interstate Company, Ltd. (WIC) filed a refund report in Docket No. RP85–39. WIC states that the refunds were made to comply with Article IV of the Stipulation and Agreement filed in Docket No. RP85–39 on February 6, 1990 and as amended on November 13, 1990, the Federal Energy Regulatory Commission Order of May 21, 1991 and the Exit Fee Stipulation and Agreement entered into by Columbia Gas Transmission Company and WIC in Docket No. RP94–315.

WIC states that the refund report summarizes transportation refund amounts due Columbia for Period 1 (June 1, 1985 through June 30, 1987), Period II (July 1, 1987 through December 31, 1987) and Period III (January 1, 1988 through December 31, 1989) as agreed upon in the Docket No. RP85–39 Stipulation and Agreement. WIC further states that the refund report further details transportation refund amounts for Period IIIA (January 1, 1990 through August 31, 1991) calculated in accordance with the amended Docket No. RP85–39 Stipulation and Agreement.

WIC states that said refunds were paid to Columbia on June 26, 1995 in accordance with the Exit Fee Stipulation and Agreement in Docket No. RP94–315 as approved by the Commission Order dated February 10, 1995.

WIC states that copies of this filing were served on each person designated on the Commission's official service in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NW., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 8, 1995. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–19343 Filed 8–4 –95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5273–3]

Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142 that the State of West Virginia is revising its approved State Public Water System Supervision Primacy Program. West Virginia has adopted drinking water regulations for lead and copper that correspond to the National Primary Drinking Water regulations promulgated by EPA on June 7, 1991 (56 FR 26460–26564), July 15, 1991 (56 FR 32112–32113), June 29, 1992 (57 FR 28785–28789), and June 30, 1994 (59 FR 33860–33864). EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by September 6, 1995 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 6, 1995, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on September 6, 1995.

Any request for a public hearing shall include the following: (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 of the information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; 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: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

West Virginia Office of Environmental Health Services, 815 Quarrier Street, Suite 418, Charleston, West Virginia 25301.

FOR FURTHER INFORMATION CONTACT: Ghassan M. Khaled, U.S. EPA, Region III, Drinking Water Section (3WM41), at the Philadelphia address given above; telephone (215) 597–8992.

Dated: July 20, 1995.

W. Michael McCabe,

Regional Administrator, EPA, Region III.

[FR Doc. 95–19404 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5273–7]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (''EPA'') proposes to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''). Notice is being published to inform the public of the proposed settlement and of

the opportunity to comment. The settlement is intended to resolve a portion of the liability of Commercial Decal, Inc. for costs incurred by EPA at the Commercial Decal, Inc. Site in Mount Vernon, New York.

DATES: Comments must be provided on or before Sepember 6, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866 and should refer to: In the Matter of: The Commercial Decal, Inc. Site, Mount Vernon, New York, U.S. EPA Index No. II–CERCLA–95–0202.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New York/ Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866, (212) 637–3181, Attention: Carl Garvey.

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i)(1) of CERCLA, notice is hereby given of a proposed Administrative Cost Recovery Agreement (''Agreement'') concerning the Commercial Decal, Inc. Site (the ''Site''), Mount Vernon, New York. Section 122(h)(1) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

This Agreement is a settlement regarding payment for response costs incurred by EPA at the Site. Under the terms of the Agreement, Commercial Decal, Inc. will reimburse $350,000 of the United States' response costs. The United States Bankruptcy Court for the Southern District of New York (Hon. John J. Connelly) approved the Agreement by Order dated November 17, 1994.

A copy of the proposed Agreement may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866, Attention: Carl Garvey.

Dated; July 17, 1995.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 95–19405 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5274–2]

Pike County Drum; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 12 parties at the Pike County Drum Site (the Site) in Osyka, Mississippi an opportunity to enter into a Cost Recovery Agreement to settle claims for past and future response cost at the Site. EPA will consider public comments on the proposed settlement for thirty (30) calendar days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement and a list of settling parties are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 x6169.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: July 27, 1995.

H. Kirk Lucius,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 95–19403 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[IC Docket No. 94–31; FCC 95–256]

Preparation for International ITU World Radiocommunication Conferences

AGENCY: Federal Communications Commission.

ACTION: Report.

SUMMARY: The Report contains the Federal Communications Commission's recommended United States Proposals to the 1995 World Radiocommunication Conference to be convened by the International Telecommunication Union from October 23 to November 17, 1995, in Geneva, Switzerland. The Commission's recommended proposals address the introduction of the global mobile-satellite service, the simplification of the international Radio Regulations, and other items on the conference agenda.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Audrey L. Allison, International Bureau, (202) 739–0557, or Damon C. Ladson, International Bureau, (202) 739–0510.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report, IC Docket No. 94–31, FCC 95–256, adopted and released June 15, 1995. The full text of this Report is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, Room 239, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report

1. This Report provides the Federal Communications Commission's recommended United States Proposals for the 1995 World Radiocommunication Conference (WRC–95). These recommended proposals seek to improve the international spectrum allocations and related measures necessary for the successful introduction of innovative global non-geostationary orbit communications satellite systems. These proposed actions will foster the implementation of Mobile-Satellite Service (MSS) networks and their inauguration of cost-efficient voice and data mobile communications services to all corners of the globe. These new satellite networks promise to spur multi-billion dollar U.S. industries and to form an integral segment of the Global Information Infrastructure. The Commission's recommended proposals are being transmitted to the Department of State for development of final United States Proposals.

2. WRC–95 will be the first conference under the International Telecommunication Union's new accelerated conference cycle to discuss substantive spectrum allocation and regulatory matters. This conference represents a significant opportunity to build a foundation for advancing near and long-term United States telecommunications goals. In particular, WRC–95 is critical to new commercial telecommunications industries—including the low-Earth orbit (LEO) MSS systems already licensed by the Commission.

3. To accomplish these aims, the Commission's primary recommended proposals for WRC–95 seek: (1) To designate spectrum for feeder links necessary to support MSS systems; (2) to reduce technical constraints on current global MSS spectrum allocations to make them usable for MSS operations; and (3) to obtain additional global spectrum allocations for MSS service links—including 6 MHz below 1

GHz to support non-voice systems known as Little LEOs and an adjustment to the existing 2 GHz allocation necessary to accommodate multiple competing global MSS systems, including those known as Big LEOs. The Report also addresses the simplification of the international Radio Regulations and other issues on the WRC–95 agenda, including space services, international satellite orbit allotment plans, high frequency broadcasting and future conference agendas.

4. The Commission's recommended proposals are based on the work of the WRC–95 Industry Advisory Committee, comments received from the public in response to two Notices of Inquiry, and participation in international preparatory activities for WRC–95, including the 1995 Conference Preparatory Meeting (CPM–95).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19195 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–M

[GN Docket No. 93–252, DA 95–1303]

Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Foreign Ownership Waiver Petitions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As a result of legislation which reclassified certain licensees, waivers were filed to request retention of existing foreign ownership that would otherwise not be permitted. This order resolves those requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 and the First Report and Order in this docket.

EFFECTIVE DATE: September 6, 1995.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in GN Docket No. 93–252, DA 95–1303, adopted June 12, 1995 and released June 12, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of the Order

Introduction

1. This order resolves thirty-three requests for waiver of the foreign ownership rules filed pursuant to the Omnibus Budget Reconciliation Act of 1993 (Budget Act) and the First Report and Order in this docket (CMRS First and Order) 59 Fed. Reg. 1285 (Jan. 10, 1994). As discussed herein, we (1) grant the petitions filed by MAP Mobile Communications, Geotek Corporation, Nextel Corporation, Pittencrieff Communications, RACOM, and Uniden; (2) dismiss the waiver petition filed by Comcast Corporation as moot; and (3) deny the remaining petitions.

Background

2. Prior to the enactment of the Budget Act, petitioners were regulated as private land mobile radio service providers and therefore were not subject to the foreign ownership restrictions contained in Section 310(b) of the Communications Act (the Act). In the Budget Act, Congress reclassified certain categories of private land mobile radio providers as commercial mobile radio service (CMRS) providers, and provided that they would be treated as common carriers under the Act. As a result of this statutory change, reclassified CMRS providers will become subject to the foreign ownership restrictions applicable to common carriers.

3. To alleviate the potential burden on reclassified licensees of complying with the foreign ownership restrictions, the Budget Act provided for limited grandfathering of existing foreign interests in such licensees. Specifically, Congress provided that any private land mobile service licensee subject to reclassification as a CMRS provider could petition the Commission by February 10, 1994 for waiver of the application of Section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. The statute further stated that the Commission could grant such waivers to eligible petitioner only upon certain conditions: (a) the extent of foreign ownership interest could not be increased beyond May 24, 1993 levels; and (b) the waiver could not allow any subsequent transfers in violation of Section 310(b).[1] In the CMRS First Report and Order, we indicated that we also would apply the waiver provisions to foreign officers and directors.

4. In the CMRS First Report and Order, the Commission established a petition procedure for affected licensees to request waiver of the foreign ownership restrictions. The Commission acknowledged that because of the February 10, 1994 filing deadline, petitioners might be required to file their waiver requests prior to a final determination of whether they were subject to reclassification. Accordingly, the Commission stated that the filing of a petition would not prejudice a licensee's right at a later date to assert that it should not be reclassified as a CMRS provider. Thirty-three timely-filed requests were received by the February 10 statutory deadline.

5. Following the filing of the petitions, the Commission adopted the Second Report and Order in this docket (CMRS Second Report and Order) 59 Fed. Reg. 18,493 (Apr. 19, 1995), which specified those services that would be regulated as CMRS (and thereby subject to the foreign ownership restrictions). In that Order, the Commission defined CMRS as a mobile service that is: (a) provided for profit, *i.e.,* with the intent of receiving compensation or monetary gain; (b) an interconnected service; and (c) available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. A mobile service that does not meet that definition is presumed to be PMRS.

6. On May 24, 1994, the Land Mobil and Microwave Division of the Private Radio Bureau asked all petitioners to provide supplemental information regarding their waiver requests. In particular, the Division asked each petitioner to certify whether, in light of the guidelines set forth in the CMRS Second Report and Order, it was subject to reclassification as a CMRS provider and would therefore qualify for statutory relief from the restrictions contained Section 210(b).

Discussion

A. Waiver Requests of Geotek, MAP Mobile, RACOM, and Uniden

7. In their initial and follow-up filings, petitioners Geotek, MAP Mobile, RACOM and Uniden indicate that they are subject to reclassification as CMRS providers and accordingly request waiver of the foreign ownership restrictions. No opposition to any of these petitions were filed.

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[1] The legislative history accompanying the Budget Act provides that a waiver can extend only to the particular person or entity who holds the foreign ownership on May 24, 1993 and does not transfer to any future foreign owners. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 495 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1184.

8. We conclude that the petitions filed by Geotek, MAP Mobile, RACOM, and Uniden meet the statutory requirements for grant of the requested waivers. Each of these petitioners has satisfied the informational showings and certifications required by the Budget Act, the CMRS First Report and Order, and our May 24 request for information. Moreover, allowing these petitioners to retain foreign ownership that existed as of May 23, 1993, will help ensure a smooth transition as these entities and/or their subsidiaries become subject to CMRS regulation.

9. We therefore exercise our authority to grandfather all foreign ownership that lawfully existed in each of these petitioners as of May 24, 1993. Consistent with the Budget Act, we also impose the following conditions on each waiver: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. Licensees operating in violation of the terms of these waivers will be subject to appropriate enforcement action.

10. We also clarify that, while petitioners may not increase their level of foreign ownership above May 24, 1993 levels, the waivers granted by this Order do apply to additional licenses granted to petitioners in the same service after May 24, 1993 and prior to August 10, 1996, provided the same ownership structure is maintained. We believe that this is consistent with Congressional intent in grandfathering the foreign ownership interests of reclassified licensees. In the CMRS Second Report and Order 59 FR 18,493 (Apr. 19, 1995), we provided that grandfathered licensees who acquired new licenses in the same service during the 3-year statutory transition period could extend grandfathered PMRS status to such new licenses until August 10, 1996. We believe the same flexibility should be extended to petitioners with respect to the waivers granted by this *Order*. Accordingly, until August 10, 1996, petitioners may acquire additional licenses in the same service using the ownership structure approved by this waiver. The requirements of Section 310(b) will apply, however, to any licenses awarded to petitioners after August 10, 1996.

B. Waiver Request of Pittencrieff

11. In its initial petition and May 24 supplemental filing, Pittencrieff stated that as of May 24, 1993, it was 100 percent foreign owned, but that its level of foreign ownership had declined to 54.4 percent as of the date of the petition. Subsequently, in a September 26, 1994 letter, Pittencrieff stated that after the initial petition was filed, it had undergone a corporate reorganization involving the *pro forma* transfer of its licenses to a newly-created wholly-owned subsidiary. Pittencrieff indicated that while the formal chain of ownership of the licenses had been altered by the transaction, the identity of the foreign interest holders did not change. Pittencrieff also noted that it has further reduced its foreign ownership level to 23.8 percent.

12. The Bureau concludes that Pittencrieff is entitled to a waiver applicable to any foreign individual or entity who held an interest in Pittencrieff's licenses as of May 24, 1993. Pittencrieff's September 26, 1994 letter indicates that as a result of its corporate reorganization, such foreign interest holders now hold their interests through a new entity created since the petition was filed. Nevertheless, we believe that the waiver policy established by Congress extends to such interests, provided that the petitioner certifies that (1) the identify of the foreign interest holders has not changed, and (2) the percentage interest in the licensees held by such interest holders has not increased since May 24, 1993. We therefore grant Pittencrieff's waiver request provided that it certifies to the above conditions within 60 days after publication of this Order in the **Federal Register**. As discussed in paragraph 10, *supra*, we also extend this waiver to additional licenses acquired by Pittencrieff through August 10, 1996, in services where it held licenses as of May 24, 1993, so long as its ownership structure remains in place.

C. Waiver Request of Nextel

13. Nextel states in its petition and follow-up filings that it is subject to reclassification as a CMRS provider and accordingly requests waiver of the foreign ownership restrictions. Nextel explains that a waiver is needed because Matsushita, a Japanese corporation, acquired a 1.38 percent equity interest in Nextel in 1992 and has the right to designate one member of Nextel's nine person Board of Directors. Nextel also notes that the identity of the board member designated by Matsushita has changed since May 24, 1993. Nextel maintains that in the case of a corporate directorship interest, the Budget Act grandfathers the interest itself, not the individual representing the corporate interest. Therefore, Nextel argues, the Commission should grandfather Matsushita's corporate directorship interest and grant the waiver.

14. In addition, Nextel notes that it has executed an agreement with another Japanese corporation, Nippon Telephone and Telegraph Company (NTT), which will permit NTT to acquire a 0.7 percent interest in Nextel and to be represented by a director on Nextel's Board. Nextel states that in connection with the transaction, it has undertaken a corporate restructuring and has filed applications for the *pro forma* assignment of all licenses held by Nextel to its wholly-owned subsidiaries. Once these *pro forma* applications are granted, Nextel states that the Matsushita and NTT interests in Nextel will be within the limitations of Section 310(b)(4) and the waiver requested here no longer will be necessary.

15. Nextel's waiver request is opposed by Kevin Lausman, who filed an Opposition and a number of related documents. In his Opposition, Lausman alleges that Nextel mischaracterized the nature of the Matsushita's interest in Nextel. Specifically, Lausman maintains that Nextel's representation that Matsushita's right to ''designate'' one member of the board is inconsistent with an SEC filing showing that Matsushita could ''nominate'' a board member, provided its ownership remained at a certain level. Lausman also alleges that Nextel attempted to mislead the Commission when its petition only identified licenses held by Nextel and not those of its subsidiaries. Moreover, Lausman maintains that Nextel is ineligible for the relief it requests on the grounds that it improperly executed an agreement to increase its level of foreign ownership and permitted Matsushita to change its representative on the Board of Directors. Finally, Lausman argues that granting Nextel's waiver is inconsistent with public policy in view of Japan's unfair trade practices.

16. We are not persuaded by Lausman's arguments.[2] At the outset, we observe that Lausman's opposition was not timely filed and thereby is procedurally defective. Pursuant to Section 1.45(a) of the Commission's Rules, Lausman should have filed his opposition by February 18, 1994, but did not in fact file with the Commission until March 11. Moreover, Lausman did not provide any basis why the Commission should accept its opposition out-of-time.

17. While we have sufficient reason to dismiss Lausman's opposition as untimely on its face, we also find Lausman's substantive allegations to be without merit. We disagree with Lausman's allegation that Nextel

[2] For the reasons set forth below, we also dismiss all subsequently-filed pleadings related to Lausman's Opposition.

misrepresented or failed to disclose information material to our consideration of the waiver requested in Nextel's petition. Nextel's petition and supplemental filings fully comply with the informational requirements set forth in the CMRS First Report and Order. In its petition, Nextel states that Matsushita is a foreign entity that holds an equity interest in Nextel that does not exceed the Section 310(b)(3) benchmark. Nextel also disclosed that, based on that interest, Matsushita has the right to designate one member of Nextel's Board of Directors. Nextel also explains that, due to personnel changes in Matsushita, the individual serving as Matsushita's representative on Nextel's Board has changed subsequent to May 24, 1993. Lausman has failed to show how any of these disclosures are incomplete or misleading. The purported discrepancy between Nextel's waiver petition and its SEC filing is a minor difference in terminology that has not substantive significance.

18. In addition, we find that Nextel did not act improperly in identifying only those licenses held by Nextel (and not by its subsidiaries) for purposes of its waiver request. Nextel's waiver request is expressly limited to those licenses that it holds directly and which otherwise would be subject to Section 310(b)(3). Nextel was not required to identify its indirect interest in other licenses for which no waiver either was required or sought.

19. Finally, we do not believe the agreement with NTT makes Nextel ineligible for the relief it requested. While Lausman correctly observes that the statute prohibits increases in foreign ownership subsequent to May 24, 1993, we note that Nextel has not requested such relief with respect to NTT's prospective interest. Instead, Nextel properly has taken separate steps to comply with the Section 310(b)(4) foreign ownership restrictions.

20. Accordingly, we grandfather all foreign ownership in Nextel that lawfully existed as of May 24, 1993, subject to the following conditions: (a) The extent of foreign ownership interest cannot be increased beyond May 24, 1993 levels; and (b) any subsequent transfers in violation of Section 310(b) are prohibited. As discussed *supra*, we construe the statute to extend the waiver to the acquisition of new licenses in services that Nextel provided as of May 24, 1993, so long as the same ownership structure remains in place.

21. We also grandfather Matsushita's designee on the Nextel Board of Directors, regardless of the fact that the identity of the individual serving as Matsushita's representative changed after May 24, 1993. While the statute prohibits changes in the identity of foreign owners of grandfathered licensees, it does not expressly address the issue of directors. We further note that individual or corporate shareholders commonly seek to protect their investment by obtaining the right to nominate representatives to the board of directors. We conclude that in allowing foreign entities who held ownership interests in reclassified licensees prior to May 24, 1993 to retain those interests, Congress did not intend to deprive such entities of pre-existing rights to nominate members of the board of directors based on such ownership. So long as the entity controlling the directorship remains unchanged, we believe a change in the identity of the individual director is permissible. Accordingly, we conclude that Matsushita's corporate directorship interest should be grandfathered along with its ownership interest, and that the change in the identity of the individual serving as Matsushita's representative does not vitiate the waiver.

D. Waiver Request of Comcast

22. Comcast notes that the Commission previously has granted it a waiver of the foreign ownership restrictions to permit an Australian citizen to serve as an officer of the corporation. Nevertheless, Comcast requests a waiver to the extent necessary to allow this officer to remain once certain of its private land mobile subsidiaries are reclassified as CMRS providers.

23. The Bureau agrees with Comcast that the Commission's prior order allowing Comcast to have a foreign corporate officer under Section 310(b)(4) of the Act obviates the need for a separate, statutory waiver. In that Order, the Commission determined that the appointment of John Alchin, an Australian citizen, to the corporate officer of senior Vice President and Treasurer of Comcast would not adversely affect the public interest. The Commission subsequently has extended the scope of this waiver to permit Alchin to serve as an officer of any subsidiary of Comcast that directly or indirectly controls common carrier licensees but is not itself a common carrier licensee. Because the Commission has determined that Alchin's service as a corporate officer is in the public interest, and thereby has granted Comcast a waiver pursuant to Section 310(b)(4), the Bureau concludes that the additional waiver relief requested is unnecessary. Accordingly, Comcast's petition is dismissed as moot.

E. Other Waiver Requests

24. In responses to the Land Mobile and Microwave Division's May 24 supplemental information request, the remaining petitioners stated that, based on the Commission's rules, they would not be reclassified and thereby declined to certify that they would become CMRS licensees. Noting that the Commission has stated that ''the filing of a [Section 310(b)] petition would not prejudice a licensee's future arguments as to whether it should be reclassified,'' these petitioners stated that, based on their current understanding of the Commission's rules, their radio operations are private. The petitioners nevertheless requested waiver of the foreign ownership restriction in the event that future Commission interpretations suggested they would be reclassified as CMRS providers. The petitioners otherwise failed to provide the information requested in the May 24 letters.

25. The Bureau declines to grant waivers to petitioners who have stated they will remain private mobile radio service providers. Under the Budget Act, waiver of the foreign ownership restrictions is only available to licensees that will be reclassified as CMRS. Because petitioners maintain that their radio operations remain private under the criteria set forth in the CMRS Second Report and Order, the relief requested neither is available nor required. Petitioners' argument that the CMRS First Report and Order affords the flexibility to obtain waiver relief in the future should the Commission clarify its CMRS definition is erroneous. Rather, the language cited by petitioners was intended to protect licensees that could not determine whether they would be reclassified until the CMRS Second Report and Order was released. Based on the standards set forth in the CMRS Second Report and Order, petitioners had sufficient information to determine whether they would be reclassified.

Ordering Clauses

26. Pursuant to our authority under 47 U.S.C. §§ 155(c)(1) and 332(c)(6), *it is ordered* that the requests for waiver filed by Geotek, MAP Mobile, Nextel, RACOM, and Uniden are hereby granted subject to the conditions described above.

27. *It is further ordered* That the waiver request filed by Pittencrieff *is granted*, provided that Pittencrieff certifies within 60 days after this Order is published in the **Federal Register** that (1) The identity of the foreign interest holders has not changed, and (2) the

percentage interest in the licenses held by such interest holders has not increased since May 24, 1993.

28. *It is further ordered* That the waiver request filed by Comcast IS DISMISSED as moot.

29. *It is further ordered* That the waiver requests filed by ADT, ADT Mid-South, ADT Mountain West, ADT Northeast, ADT Southwest, ADT West, Amerchol, Big Sky, BP Chemicals, Eastern Associated, Hanson, North Antelope, NuEast, Peabody, Praxair, Rhone-Poulenc, Rochelle, Seadrift, Timken, UCAR, UCAR Carbon, UCAR Resinas, UCC&P, UMETCO, Union Carbide, and Union Carbide Caribe are denied.

30. *It is further ordered* That the Opposition, Petition, for an Order to Cease and Desist, Motion for Summary Judgment, Petition for an Order to Show Cause Why All Radio Station Licenses Held or Controlled by Nextel Communications, Inc. Should Not Be Revoked, Supplement to Opposition, Motion for Deferral of Action, and Motion to Accept Unauthorized Pleading filed by Kevin Lausman are dismissed.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–19301 Filed 8–4–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

YachtShip CruiseLine, Inc. (d/b/a American West Steamboat Company) and Sternwheeler Boat Company, 520 Pike Street, Suite 1610, Seattle, Washington 98101.
Vessel: QUEEN OF THE WEST
Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19409 Filed 8–4–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessels: CELEBRATION, ECSTASY, FANTASY, FASCINATION, FESTIVALE, HOLIDAY, IMAGINATION, INSPIRATION, JUBILEE, SENSATION and TROPICALE
Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19304 Filed 8–4–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessels: ECSTASY, FANTASY, FASCINATION and SENSATION

Carnival Corporation and Celebration Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: CELEBRATION

Carnival Corporation and Festivale Maritime Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: FESTIVALE

Carnival Corporation and Sunbury Assets Limited, 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: HOLIDAY

Carnival Corporation and Tropicale Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel:TROPICALE

Carnival Corporation and Jubilee Cruises, Inc., 3655 N.W. 87th Avenue, Miami, Florida 33178–2428
Vessel: JUBILEE.
Dated: July 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–19305 Filed 8–4–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Century South Banks, Inc., 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 August 31, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Century South Banks, Inc., Dahlonega, Georgia; to acquire 100 percent of the voting shares of Peoples Bank, Lavonia, Georgia.

2. First Commerce Corporation, New Orleans, Louisiana; to acquire 9 percent of the voting shares of First United Bank of Farmerville, Farmerville, Louisiana.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Madison Holdings Limited Partnership, Madison Heights, Michigan; to become a bank holding company by acquiring 49.23 percent of the voting shares of Madison Bancorp, Inc., Madison Heights, Michigan, and

thereby indirectly acquire Madison National Bank, Madison Heights, Michigan.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Texas Bancorp Shares, Inc., San Antonio, Texas; to acquire 100 percent of the voting shares of Camino Real Bancshares, Inc., San Antonio, Texas, and thereby indirectly acquire Camino Real Delaware, Wilmington, Delaware, and Camino Real Bank, N.A., Eagle Pass, Texas.

In connection with this application, TBSI Merging Company, Inc., San Antonio, Texas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Camino Real Bancshares, Inc., San Antonio, Texas, and thereby indirectly acquire Camino Real Delaware, Wilmington, Delaware, and Camino Real Bank, N.A., Eagle Pass, Texas.

Board of Governors of the Federal Reserve System, August 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19369 Filed 8–4–95; 8:45 am]

BILLING CODE 6210–01–F

MBNA Corporation; 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.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. MBNA Corporation, Newark, Delaware; to engage *de novo* through its subsidiary, MBNA Consumer Services, Inc., Newark, Delaware, in making, acquiring, and servicing consumer loans and credit card loans, pursuant to §§ 225.25(b)(1)(i) and (b)(1)(ii) of the Board's Regulation Y; in acquiring and servicing mortgage loans, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y; and in offering credit insurance (life, disability, and involuntary unemployment), pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19370 Filed 8–4–95; 8:45 am]

BILLING CODE 6210–01–F

Swiss Bank Corporation; Notice to Engage in Certain Nonbanking Activities

Swiss Bank Corporation, Basel, Switzerland (Applicant), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23 of the Board's Regulation Y (12 CFR 225.23) to retain control of all the voting shares of certain United States subsidiaries (United States Subsidiaries) of S.G. Warburg Overseas Ltd., London, England, and the assets and liabilities of the branch of S.G. Warburg Forex Ltd., London, England, that is located in New York, New York (New York Forex), and thereby engage in the following nonbanking activities:

(1) Providing various types of investment and financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y;

(2) Providing discount and full-service brokerage services, and activities incidental thereto, pursuant to § 225.25(b)(15) of the Board's Regulation Y;

(3) Dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.25(b)(16) of the Board's Regulation Y;

(4) Acting as agent in the private placement of all types of securities, and providing related advisory services;

(5) Underwriting and dealing in, to a limited extent, all types of debt and equity securities (other than securities issued by open-end investment companies);

(6) Trading for its own account in the option contracts as listed below:

American Stock Exchange

(i) Major Market Index options

Chicago Board Options Exchange

(ii) Standard & Poor's 100 Stock Index options

(iii) Standard & Poor's 500 Stock Index options

(vi) Long-Term Interest Rate options

(7) Trading for its own account in the futures and options on futures contracts listed as listed below:

Chicago Board of Trade

(i) Options on The Bond Buyer Municipal Bond Index futures

Chicago Mercantile Exchange

(ii) Standard & Poor's 100 Stock Price Index futures

(ii) Standard & Poor's 500 Stock Price Index futures

(iii) Options on Standard & Poor's 500 Stock Price Index futures

(vi) Eurodollar futures

Marche a Terme International de France (Paris)

(v) Cotation Assiste en Contenue (CAC) 40 Stock Index futures

(8) Trading for its own account in foreign exchange spot, forward, and futures transactions.

On June 26, 1995, Applicant received temporary authority to acquire the United States Subsidiaries and New York Forex pursuant to section 4(c)(9) of the BHC Act (12 U.S.C. 1843(c)(9)). This authority was granted in reliance upon certain commitments and conditions, including Applicant's commitment to file this notice.

The United States Subsidiaries include S.G. Warburg & Co., Inc., New York, New York (SGWC), S.G. Warburg Options Inc., Chicago, Illinois (SGWO), and S.G. Warburg OTC USA, Inc., Chicago, Illinois (SGWOTC). Applicant intends to merge SGWC with and into

SBC Capital Markets Inc., New York, New York (CMI), a subsidiary of Applicant that engages in a wide range of securities- and derivatives-related activities, including underwriting and dealing in all types of debt and equity securities on a limited basis. *See Swiss Bank Corporation*, 81 Federal Reserve Bulletin 185 (1995) (*Swiss Bank Order*). SGWO and SGWOTC will either be merged with and into CMI at the same time or liquidated promptly thereafter.

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity ''which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto.''

Applicant states that the Board previously has determined by regulation or order that all of the activities conducted by the United States Subsidiaries or New York Forex, when conducted within the limitations established by the Board in its regulations and in related interpretations and orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act, and, where applicable, are consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See* 12 CFR 225.25(b)(4), (b)(15), and (b)(16); *Swiss Bank Order. See also J.P. Morgan & Co. Incorporated*, 75 Federal Reserve Bulletin 192 (1989), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989), *Canadian Imperial Bank of Commerce*, 76 Federal Reserve Bulletin 158 (1990), *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993), and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993) (Section 20 Orders).

Applicant maintains that these activities will be conducted in conformity with the conditions and limitations established by the Board in prior cases.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that 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.'' 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance CMI's ability to compete with other financial institutions engaged in the investment banking business at the international level, by providing it with access to the customer base of the United States Subsidiaries and New York Forex, thereby enhancing its ability to compete in customer-oriented businesses such as underwriting and private placements in the United States. Applicant also asserts that the proposal will enable CMI to offer a broader range of products and services to its customers, and will make CMI a more effective competitor in the United States capital and securities markets. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or other applicable laws.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 22, 1995. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–19371 Filed 8–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0239]

Drug Export; Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) With Sorbitol

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amgen, Inc., has filed an application requesting approval for the export of the human biological product Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) with sorbitol in vials, pre-filled syringes, and purified bulk, to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act

requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Amgen, Inc., 1840 Dehavilland Dr., Thousand Oaks, CA 91320–1789, has filed an application requesting approval for the export of the human biological product Neupogen® Recombinant Methionyl Granulocyte Colony Stimulating Factor (r-metHuG-CSF) with sorbitol in vials, pre-filled syringes, and purified bulk, to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Federal Republic of Germany, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Neupogen® is indicated for the reduction in the duration of neutropenia and its clinical sequelae in patients undergoing myeloblative therapy followed by autologous or allogeneic bone marrow transplantation and the reduction in the incidence of febrile neutropenia in patients treated with established cytotoxic chemotherapy for non-myeloid malignancy. Neupogen® is used in patients, children or adults, with severe chronic neutropenia (severe congenital neutropenia, cyclic neutropenia, and idiopathic neutropenia) induces a sustained increase in absolute neutrophil counts in peripheral blood and a reduction of infection and related events. The application was received and filed in the Center for Biologics Evaluation and Research on June 15, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 17, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 24, 1995.

James C. Simmons,

Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–19426 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0147]

Determination of Regulatory Review Period for Purposes of Patent Extension; Excimed™ UV200LA/SVS APEX Excimer Laser Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Excimed™ UV200LA/SVS APEX Excimer Laser Systems and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Excimed™ UV200LA/SVS APEX Excimer Laser Systems. Excimed™ UV200LA/SVS APEX Excimer Laser Systems are indicated for phototherapeutic keratectomy (PTK) procedures which treat superficial pathology located in the anterior 100 microns of the cornea. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Excimed™ UV 200LA/SVS APEX Excimer Laser Systems (U.S. Patent No. 4,941,093) from Summit Technology, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 21, 1995, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Excimed™ UV200LA/SVS APEX Excimer Laser Systems represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Excimed™ UV200LA/SVS APEX Excimer Laser Systems is 2,271 days. Of this time, 1,156 days occurred during the testing phase of the regulatory review period, while 1,115 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: December 22, 1988. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act for human tests to begin became effective on December 22, 1988.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: February 20, 1992. The applicant claims November 19, 1991, as the date the premarket approval application (PMA) for Excimed™ UV200LA/SVS APEX Excimer Laser Systems was initially submitted. However, FDA records indicate that PMA P910067 submitted on November 19, 1991, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated February 7, 1992. The completed PMA was then submitted on February 20, 1992, which is considered to be the PMA initially submitted date.

3. *The date the application was approved*: March 10, 1995. FDA has verified the applicant's claim that PMA P910067 was approved on March 10, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 609 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 6, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 15, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1995.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 95–19425 Filed 8–4–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), is publishing the following summaries of proposed collections for public comment.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Alternative Quality Assessment Survey; *Form No.:* HCFA–667; *Use:* This survey is used in lieu of an onsite survey for those Clinical Laboratory Improvement Amendments of 1988 (CLIA) laboratories with good performance determined by their last onsite survey, and is designed to screen laboratories and alert HCFA to where an onsite inspection is vital. The survey has been revised to reflect CLIA's streamlined inspection process, to reduce burden and improve the CLIA system by rewarding good performance. *Frequency:* Annually; *Affected Public:* Business or other for profit, not for profit, Federal Government, State, local, or tribal government; *Number of Respondents:* 4,000; *Total Annual Hours:* 6,000.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Data Collection and Analysis for Generating Procedure Specific Cost Estimates; *Form No.:* HCFA R–181; *Use:* The Survey of Practice Costs is a survey of provider practices whose services are covered by the Medicare Fee Schedule (MFS). The data collected from this survey will enable HCFA to meet its congressional mandate to develop resource-based practice expense relative value unit estimates for the MFS by 1998; *Frequency:* Annually; *Affected Public:* Individuals or households, business or other for profit; *Number of Respondents:* 3,500; *Total Annual Hours:* 10,500.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 31, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–19391 Filed 8–4–95; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Center for Research Resources; Notice of Meeting of the Board of Scientific Counselors, NCRR

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Research Resources, August 30, 1995, in Building 45, Room A, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 8:00 a.m. to 12 noon for the review of the Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 30 from 1:00 p.m. to adjournment for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Sonja Shorts, Assistant to the Executive Secretary, NCRR, Building 12, Room 12A, National Institutes of Health, Bethesda, Maryland, 20894–2425, Area Code 301, 496–6023, will provide a summary of the meeting and a roster of the Board members and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Shorts in advance of the meeting.

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19406 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meetings: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on September 11–12, 1995. Meetings of the Council, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be held at the National Institutes of Health, Building 31C, Bethesda, Maryland. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be held at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting of the full Council will be open to the public on September 11 in Conference Room 10 from approximately 1 p.m. until 4 p.m. for opening remarks of the Institute Director, discussion of procedural matters. Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program will include an update on AIDS vaccine research, an overview of clinical research core curriculum, a review of the Office of AIDS Research, and the annual report of the Division of Intramural Research.

On September 12 the meetings of the NAAIDC Allergy and Immunology Subcommittee and NAAIDC Microbiology and Infectious Diseases Subcommittee will be open to the public from 8:30 a.m. until adjournment. The subcommittee will meet in conference rooms 9 and 10 respectively. The meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 8 a.m. until adjournment on September 12. The subcommittee will meet at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Acquired Immunodeficiency Syndrome Subcommittee, NAAIDC Allergy and Immunology Subcommittee and the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately four hours for review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 8:30 a.m. until approximately 1 p.m. on September 11, in conference rooms 7, 9 and 10 respectively. The meeting of the full Council will be closed from 4 p.m. until recess on September 11 for review, discussion, and evaluation of individual grant applications. These applications and the discussions would reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John J. McGowan, Director, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 3C20, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855 Immunology, Allergic and Immunologic Diseases Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19410 Filed 8–4 –95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: AIDS Research Advisory Committee, NIAID

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 12, 1995, in the Versailles Ballroom of the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from 8 a.m. until adjournment. The AIDS Research Advisory Committee (ARAC) advises and makes recommendations to the Director, National Institute of Allergy and Infectious Diseases, on all aspects of research on HIV and AIDS related to the mission of the Division of AIDS (DAIDS).

The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress, and provide concept clearance for proposed research initiatives. Attendance by the public will be limited to space available.

Ms. Anne P. Claysmith, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, Room 2B06, telephone 301–402–0755, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Claysmith in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; (93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19407 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 20–21, 1995. The meeting of the full Council will be open to the public September 20, from 8 a.m. to noon and again on September 21, from 10 a.m. to noon in Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland, to discuss administrative issues relating to Council business and special reports. The following subcommittee meetings will be open to the public September 20 from 1 p.m. to 2 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee meeting will be held in Conference Room 10, Building 31C; Digestive

Diseases and Nutrition Subcommittee meeting will be held in Conference Room 7, Building 31C; and Kidney, Urologic and Hematologic Diseases Subcommittee meeting will be held in Conference Room 8, Building 31C. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meetings of the subcommittees and full Council will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 20, from 2 p.m. to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases Subcommittee; Digestive Diseases and Nutrition Subcommittee; and Kidney, Urologic and Hematologic Diseases Subcommittee. The Full Council meeting will be closed from 8:30 a.m. to 10 a.m. on September 21. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Natcher Building, Room 6AS–25C, Bethesda, Maryland 20892, (301) 594–8834, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A07, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6623.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19411 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on September 26–27, 1995, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Extramural Programs Subcommittee will meet on September 25 in Conference Room B, Building 38A, from 2 p.m. to approximately 3:30 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 4:30 p.m. on September 26 and from 9 a.m. to adjournment on September 27 for administrative reports and program discussions. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Mrs. Karin Colton at 301–496–4621 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on September 25 will be closed to the public from 2 p.m. to approximately 3:30 p.m., and the regular Board meeting on September 26 will be closed from approximately 4:30 p.m. to 5 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–19412 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 11–12, 1995. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on September 11, 1995, at approximately 9 a.m., and will recess at approximately 6 p.m. The meeting will reconvene on September 12, 1995, at approximately 8:30 a.m. and will adjourn at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many

Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, National Institute of Health.

[FR Doc. 95–19413 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Ad Hoc Review Committee for the Recombinant DNA Advisory Committee; Meeting

Notice is hereby given of a meeting of the Ad Hoc Review Committee for the Recombinant DNA Advisory Committee on August 28, 1995, at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public to discuss three major topics for review: (1) Domain and mandate of the Recombinant DNA Advisory Committee; (2) composition of the Recombinant DNA Advisory Committee; and (3) Recombinant DNA Advisory Committee's review of human gene transfer protocols. Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Suite 323, National Institutes of Health, 6006 Executive Boulevard, MSC 7052, Bethesda, Maryland 20892–7052, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Wivel in advance of the meeting. A summary of the meeting will be available at a later date.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: July 28, 1995.

Margery G. Grubb,

Senior Committee Management Specialist, National Institutes of Health.

[FR Doc. 95–19415 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: August 15, 1995.

Time: 8 a.m.

Place: American Inn of Bethesda.

Contact Person: Dr. Joe Marwah, Scientific Review Administrator, 6701 Rockledge Drive, Room 45188, Bethesda, MD 20892, (301) 435–1253.

Name of SEP: Clinical Sciences.

Date: August 18, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 4218, Telephone Conference.

Contact Person: Dr. Shirley A. Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, (301) 435–1198.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 15, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 17, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 18, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge II, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, MD 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: August 17, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 4200, Telephone Conference.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435–1219.

Name of SEP: Multidisciplinary Sciences.

Date: September 18, 1995.

Time: 8:30 a.m.

Place: Washington Dulles Airport Marriott, VA.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, MD 20892, (301) 435–1169.

The meetings will be closed in accordance with the provisions set forth in secs. 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 associated 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 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393, 93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–19414 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; 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 Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: August 16, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 6152, Telephone Conference.

Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

Name of SEP: Biological and Physiological Sciences.

Date: August 21, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 6152, Telephone Conference.

Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

Name of SEP: Biological and Physiological Sciences.

Date: August 23, 1995.

Time: 1 p.m.

Place: NIH, Rockledge II, Room 6152, Telephone Conference.

Contact Person: Dr. Jerry Roberts, Scientific Review Administrator, 6701 Rockledge Drive, Room 6152, Bethesda MD 20892, (301) 435–1037.

The meetings will be closed in accordance with the provisions set forth in secs. 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 associated 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 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 2, 1995.

Susan K. Feldman,

Committee Management Officer, National Institutes of Health.

[FR Doc. 95–19416 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in a U.S. Patent Application 07/169,033 and corresponding foreign patent applications entitled, ''Novel Neutrophil Chemotactic Factor, Cloned cDNA and Monoclonal Antibodies Thereto'' to Chugai Pharmaceutical Company, Limited of Tokyo, Japan. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Activated monocytes/macrophages produce various mediators that cause inflammation. Among them are chemotactic factors which cause white blood cells to migrate into inflammatory sites where factors are released. Neutrophils, the dominant leukocytes attracted by the chemotactic factors play a critical role in inflammatory reactions. Rheumatoid arthritis, idiopathic pulmonary fibrosis and pathological inflammatory changes in a variety of other diseases are believed to be caused by neutrophils and/or their products. The present invention covers neutrophil chemotactic factor (interleukin-8, IL–8), a molecular clone containing the complete coding sequence for IL–8 and monoclonal antibodies to IL–8.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in any field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before October 6, 1995, will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 21, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–19417 Filed 8–4–95; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3855–N–04]

NOFA for the John Heinz Neighborhood Development Program (NDP); Announcement of Funding Awards—FY 1995

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of competition winners.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the John Heinz Neighborhood Development Program (NDP) for fiscal year l995. The announcement contains the names and addresses of the competition winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7220, Washington, DC 20410. Telephone Number (202) 708–2186; TDD Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On February 24, 1995, HUD published a NOFA for the John Heinz Neighborhood Development Program (60 FR 10438). On June 26, 1995 an amendment was published in the **Federal Register** (60 FR 32557). The June 26, 1995 NOFA announced the availability of $4.8 to $4.95 million in funding for eligible neighborhood development organizations. The NOFA stated that the purpose of the program is to support

eligible neighborhood development activities using cooperative efforts and monetary incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Funds would be used to plan and carry out specific projects which create permanent jobs in the neighborhood; establish or expand businesses; develop new housing, rehabilitate existing housing or manage housing stock; develop essential services; or provide neighborhood improvement efforts.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the nonprofit organizations which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: July 31, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

APPENDIX A.—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP) FY 1995 GRANTS

1. Ahkenaton Community Development Corporation	Chicago	IL	75,000
2. All Citizens Taking Initiatives on Needs, Inc.	Suffolk	VA	75,000
3. Allston Brighton Community Development Corp.	Boston	MA	56,920
4. Anacostia Economic Dev. Corp	Washington.	DC	75,000
5. Bayfront NATO, Inc	Erie	PA	65,250
6. Behind the Rocks Neighborhood Association, Inc	Hartford	CT	40,000
7. Bethel New Life, Inc	Chicago	IL	75,000
8. Better Community Housing of Trenton, Inc	Trenton	NJ	75,000
9. Black Veterans for Social Justice, Inc	Brooklyn	NY	75,000
10. Brazos Neighborhood Association	Waco	TX	50,000
11. Camp Washington Community Board, Inc	Cincinnati	OH	75,000
12. Charity Cultural Services Center	San Francisco.	CA	75,000
13. Chelsea's Commission on Hispanic Affairs, Inc	Chelsea	MA	75,000
14. City Heights Community Development Corporation	San Diego	CA	75,000
15. Claretian Associates Neighborhood Development	Chicago	IL	75,000
16. Community Action Development Corporation of the Lehigh Valley	Allentown	PA	75,000
17. Cooperative Workshops, Inc	Sedalia	MO	75,000
18. Cross Community Coalition	Denver	CO	50,150
19. Cypress Hills Local Dev. Corp., Inc	Brooklyn	NY	45,000
20. Dunbar-Abrams Foundation, Inc	Bessemer	AL	75,000
21. East Akron Neighborhood Development Corporation	Akron	OH	50,000
22. East Pittsburgh Economic Development Corporation	Pittsburgh	PA	75,000
23. Elliot Park Neighborhood Inc	Minneapolis.	MN	75,000
24. Esperanza Community Housing Corporation	Los Angeles.	CA	75,000
25. Franciscan Enterprise	Portland	OR	50,000
26. Garrett Square Economic Development Corporation	Cleveland	OH	30,000
27. Holy Name Housing Corp	Omaha	NE	25,000
28. Interim Community Development Association	Seattle	WA	55,750
29. Kendall-Whittier Neighborhood Assn	Tulsa	OK	75,000
30. Liberation Community, Inc	Fort Worth	TX	75,000
31. Little Haiti Housing Association Inc	Miami	FL	75,000
32. Lopez Community Land Trust	Lopez	WA	75,000
33. Martin Street Plaza Incorporated	Atlanta	GA	75,000
34. Mechanicsville Historic CDC, Inc	Knoxville	TN	25,000
35. Minority Task Force on AIDS, Inc	New York	NY	50,000
36. Near West Side Multi Service/May Dugan Center	Cleveland	OH	74,963
37. Neighborhood Action Coalition	Portland	ME	75,000
38. Neighborhood Housing Services of Bedford-Stuyvesant	Brooklyn	NY	65,000
39. North River Development Corporation	Toledo	OH	75,000
40. Northside Development Corporation	Columbus	OH	75,000
41. Northside Neighborhood Assn., Inc	Lexington	KY	11,250
42. Northwest Bronx Community & Clergy Coalition	Bronx	NY	35,000
43. Ohio City Near West Development Corp	Cleveland	OH	75,000
44. Olde Huntersville Development Corporation	Norfolk	VA	30,800
45. Operation Pride-West End	Birmingham.	AL	75,000
46. Parramore Heritage Renovation Foundation	Orlando	FL	75,000
47. People of Phillips	Minneapolis.	MN	75,000
48. Peoples Emergency Center CDC	Philadelphia.	PA	75,000
49. Peoples Involvement Corporation	Washington.	DC	75,000
50. Philadelphia Chinatown Development Corp	Philadelphia.	PA	75,000
51. Phillips Community Development Corporation	Minneapolis.	MN	50,400

APPENDIX A.—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP) FY 1995 GRANTS—Continued

52. Phoenix Revitalization Corporation	Phoenix	AZ	75,000
53. Portland Community Reinvestment Initiatives, Inc	Portland ...	OR	75,000
54. Pratt Area Community Council	Brooklyn ...	NY	46,000
55. Reach Community Development, Inc	Portland ...	OR	69,700
56. Richmond Neighborhood Housing Services	Richmond .	VA	75,000
57. Rockford Neighborhood Redevelopment Corp	Rockford ..	IL	75,000
58. S. Cumminsville Community United For Better Hsg	Cincinnati .	OH	75,000
59. Sabin Community Development	Portland ...	OR	26,562
60. Sandtown Habitat For Humanity, Inc	Baltimore ..	MD	75,000
61. South Brooklyn Local Development Corporation	Brooklyn ...	NY	75,000
62. South East Economic Development, Inc	Grand Rapids.	MI	75,000
63. Southside Community Development & Housing Corp.	Richmond .	VA	75,000
64. St. James Community Dev. Corp	Newark	NJ	75,000
65. St. Margaret of Scotland Housing Corp	St. Louis ...	MO	75,000
66. Syracuse United Neighborhoods, Inc	Syracuse ..	NY	28,500
67. Tenants' and Workers' Support Committee	Alexandria	VA	62,000
68. The East Muskegon Neighborhood Alliance	Muskegon	MI	75,000
69. The Village of Arts and Humanities	Philadel-phia.	PA	75,000
70. Universal Community Homes, Inc	Philadel-phia.	PA	40,000
71. W. Center City Neigh Plng. Advisory Comm., Inc	Wilmington	DE	75,000
72. Washington Heights & Inwood Development Corporation	New York .	NY	45,000
73. West Angeles Community Development Corp	Los Ange-les.	CA	75,000
74. West Jackson Community Development Corporation	Jackson	MS	75,000
75. West Side Planning & Development	Chicago	IL	75,000

[FR Doc. 95–19336 Filed 8–4–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0018), Washington, DC 20503, telephone (202) 395–7340.

Title: Use of Foreign Construction Materials—Department of the Interior.

OMB Approval Number: 1084–0018.

Abstract: The provision, an agency supplement to the Federal Acquisition Regulation FAR 52.225–5, requires bidders to provide information regarding the type and cost of foreign materials proposed for use in Government construction contracts. The information provided will be used to determine the reasonableness of the cost of domestic materials.

Bureau Form Number: None.

Frequency: One time, with bid.

Description of Respondents: Prospective contractors bidding on construction contracts subject to the Buy American Act.

Estimated Completion Time: 1 hour.

Annual Responses: 250.

Annual Burden Hours: 250.

Department Clearance Officer: Craig Leff 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19435 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–RF–M

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0017), Washington, DC 20503, telephone (202) 395–7340.

Title: ''Brand Name or Equal''—Department of the Interior.

OMB approval number: 1084–0017.

Abstract: This provision, which is agency implementation of the requirements stated in Federal Acquisition Regulation (FAR) 10.004(b)(3), requires bidders to provide supplementary descriptive information regarding any ''or equal'' products offered in response to a ''brand name or equal'' solicitation. The information provided will be used to determine whether the offered product meets the Department's requirements.

Bureau form number: None.

Frequency: One time, with bid.

Description of respondents: Prospective contractors offering ''or equal'' products in response to ''brand name or equal'' solicitations.

Estimated completion time: 3 hours.

Annual responses: 100.

Annual burden hours: 300.

Department Clearance Officer: Craig Leff 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19437 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–RF–M

Office of Acquisition and Property Management; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contracting the Department's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0019), Washington, DC 20503, telephone (202) 395–7340.

Title: Indian Preference Program—Department of the Interior.

OMB Approval Number: 1084–0019.

Abstract: The clause requires contractors who have been awarded contracts in excess of $50,000 under Public Law 93–638, to establish and conduct an Indian preference program. Part of the program requires the maintenance of records concerning contractor efforts to employ Indians and to use Indian subcontractors. A second requirement of the program is the semi-annual report by the contractor to the contracting officer which summarizes the contractor's preference program efforts and indicates (a) the number, and; (b) types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations, Indian-owned economic enterprises, and all other firms.

Bureau Form Number: None.

Frequency: Semiannually.

Description of Respondents: Contractors who have been awarded contracts in excess of $50,000 pursuant to Public Law 93–638; contractors with contract awards of less than $50,000 whose contracts present substantial opportunities for Indian employment, training or subcontracting.

Estimated Completion Time: 2 hours.

Annual Responses: 2,500.

Annual Burden Hours: 5,000.

Department Clearance Officer: Craig Leff, 202–208–4979.

Paul A. Denett,

Director, Office of Acquisition and Property Management.

[FR Doc. 95–19436 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–RF–M

Office of the Secretary

Colorado; Front Range Resource Advisory Council, Northwest Resource Advisory Council, Southwest Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils—Notice of Establishment, Notice of Meeting.

SUMMARY: This notice announces the establishment of three Resource Advisory Councils for the State of Colorado by the Secretary of the Interior in accordance with the provisions of the Federal Advisory Committee Act of 1972 (FACA) 5 U.S.C. App. The Secretary has determined that the Councils are necessary and in the public interest. Copies of the Council charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA. The 3 Colorado Resource Advisory Councils are: the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council.

The Federal Land Policy and Management Act, as amended, requires the Secretary of the Interior to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Resource Advisory Councils will provide representative counsel and advice to BLM on the planning and management of the public lands as well as advice on other public land resource issues. Council members will be residents of the State in which the council has jurisdiction and will be appointed by the Secretary of the Interior.

A joint meeting of the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council will be held on August 22, 1995, in Grand Junction, Colorado. The time and location of the meeting will be announced in the local media and **Federal Register** prior to the meeting. The purpose of the meeting is to discuss the operation, organization, and general goals of the Councils. The meeting will be open to the public. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Sheri Bell, Colorado BLM, (303) 239–3670, at least 5 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Chris Wood, Policy Analyst, Office of the Assistant Director for Resource Assessment and Planning, Bureau of Land Management, Room 5558, U.S. Department of the Interior, Washington, D.C. 20240, telephone (202) 208–7013, or Tim Salt, Western Rangelands Lead, Bureau of Land Management, Room 5546, U.S. Department of the Interior, Washington, D.C. 20240, telephone (202) 208–4256.

SUPPLEMENTARY INFORMATION: The purpose of the Colorado Resource Advisory Councils is to advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with the management of the public lands. The councils' responsibilities include: providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM to identify State or regional standards for ecological health and guidelines for grazing.

Council members will be representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include: (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, off-road vehicle use, and developed recreation; (b) representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups; and (c) representatives of State and local government, Native American tribes, academia involved in the natural sciences, and the public at large.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the respective Councils.

Certification

I hereby certify that the Front Range Resource Advisory Council, the Northwest Resource Advisory Council, and the Southwest Resource Advisory Council are in the public interest in connection with the Secretary of the Interior's statutory responsibilities to manage the lands and resources administered by the Bureau of Land Management.

Date signed: August 3, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–19533 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[AK–963–1410–00–P]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Mary's Igloo Native Corporation for approximately 11,529 acres. The lands involved are in the vicinity of Mary's Igloo, Alaska.

Serial No.	Approximate land description	Acreage
F–14893–A2	T. 3 S., R. 30 W., K.R.M.	3,093
	T. 4 S., R. 30 W., K.R.M.	2,510
F–14893–B2	T. 2 S., R. 29 W., K.R.M.	2,770
	T. 5 S., R. 30 W., K.R.M.	3,156

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 6, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Acting Chief, Branch of Southwest Adjudication.

[FR Doc. 95–19380 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–JA–P

[CA–068–01–7123–00–6592]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: This notice shall amend the original closure order, for the Ord Mountain area, to optimize public opportunity for outdoor recreation, hunting and camping purposes. This amendment also clarifies and further defines the areas within the closure area available for public camping and parking.

SUMMARY: In accordance with title 43, Code of Federal Regulations 8341.2, notice is hereby given that all lands described below, administered by the Bureau of Land Management (BLM) have been closed to all motorized vehicle use, as amended herein; except for BLM operation and maintenance vehicles, law enforcement vehicles and other vehicles specifically authorized by an authorized officer of the Bureau of Land Management; and except for the authorized routes, as amended herein, administered by the BLM which are identified below, which will be signed open. This closure affects ALL of the public lands, from the powerline road southeast of Barstow (south of the Nebo Marine Base), east to Camprock road, south to Northside road (Lucerne Valley), bordered by State route 247 to the west.

Routes

The open routes of travel have been modified to optimize opportunity for outdoor recreation purposes. A map of the open route network is available from the Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311, (619) 255–8760.

Signing

Within the closure area, segments of the authorized route network will be signed as OPEN ROUTES. To reduce public confusion, routes closed by this order which appear on the current Desert Access Guides as open routes will be signed as CLOSED ROUTES where they intersect with segments of the authorized route network. CLOSED ROUTE signs may also be used at locations where use patterns show considerable public confusion. All routes not signed are to be considered closed. Visitors to this area must restrict their motor vehicle use to the authorized route network.

Private Lands

This order is in no way intended to affect the rights of private land owners, or their interests within the closure area, with respect to private lands. Further, this order does not infer any Bureau of Land Management jurisdiction over private lands, within the closure area.

Camping

Camping, staging and parking is prohibited within the Cinnamon Hills habitat restoration area. This area has been identified for intensive biological restoration. The no camping zone is clearly marked on the official map, and is located within the area bounded by Northside Road, Camprock Road, and portions of route OM–10, route OM–30 and route OM–7.

In the remainder of the closure area, camping, parking and staging may occur in a previously disturbed area within fifty feet of the edge, of any portion of the authorized route network, upon lands managed by the Bureau of Land Management. Use of private lands for this purpose requires land owner permission.

SUPPLEMENTARY INFORMATION: This closure, as modified herein, is required to mitigate the impacts of unregulated street-legal and non-street legal motorized use in a class ''L'' limited use area as designated in the California Desert District Conservation Area Plan (1980), as amended. This area is important to wildlife including upland game birds, desert tortoise habitat, and the desert tortoise, a threatened species (listed in 1989 as endangered, downgraded to threatened in 1990). This area is impacted by the neighboring Stoddard Valley Off-Highway Vehicle Area and Johnson Valley Off-Highway Vehicle Area. Route proliferation is occurring within the area and is impacting the habitat of the desert tortoise. This closure will allow for permitted use, including but not limited to grazing, recreation and mining. This closure does not affect public access by non-motorized means.

PENALTIES: Failure to comply with this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Area Manager Barstow (619 255–8700). Maps of the closure will be posted at Daggett, Barstow and Lucerne Valley Post Offices and may also be obtained from the Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311.

Dated: July 31,1995.

Michael DeKeyrel,

Acting Area Manager.

[FR Doc. 95–19381 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–40–P

[CO–933–95–1320–01; COC 57831]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 57831; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Cyprus Empire Corporation requesting the Bureau of Land Management offer for competitive lease 2,495.09 acres of federal coal in Moffatt County, Colorado.

DATES: The public hearing will be held at 7 p.m., August 24, 1995. Written comments should be received no later than September 11, 1995.

ADDRESSES: The public hearing will be held in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625. Written comments should be addressed to the Bureau of Land Management, Little Snake Resource Area Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: John Husband, Area Manager, Little Snake Resource Area Office at the address above, or by telephone at (303) 824–4441.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on August 24, 1995, at 7 p.m., in the Little Snake Resource Area Office at the address given above.

An application for coal lease was filed by Cyprus Empire Corporation requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 6 N., R. 91 W., 6th P.M.
Sec. 19, lots 6, and 7;
Sec. 30, 5, 6, and 8;
Sec. 31, lot 9.
T. 6 N., R. 92 W., 6th P.M.
Sec. 23, all;
Sec. 24, all;
Sec. 25, lots 1, and 2 and N½;
Sec. 26, N½, SW¼, and N½SE¼.

containing 2,495.09 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the August 24, 1995, public hearing should be received at the Little Snake Resource Area Office prior to the close of business August 24, 1995. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Little Snake Resource Area Office at the above address prior to close of business on August 24, 1995.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Little Snake Resource Area Office upon request.

A copy of the Draft Environmental Assessment and Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215.

Dated: August 1, 1995.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 95–19382 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–1430–05; GP174; OR–52098]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the receipt of an application from the surface estate owner for the conveyance of Federally-owned minerals.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, Harold Nippert and Patricia Nippert, surface owners, of Sandy, Oregon, have applied to purchase the mineral estate described as follows:

Willamette Meridian, Oregon

T. 20 S., R. 16 E.,
Sec. 26, SW¼;
Sec. 30, lots 3 and 4, E½SW¼ and SE¼;
Sec. 35, NE¼NE¼, W½NE¼ and NE¼ NW¼.
T. 21 S., R. 16 E.,

Sec. 1, lots 1, 2, 3, and 4, N½SE¼ and NE¼SW¼;
Sec. 2, lot 1.
T. 21 S., R. 17 E.,
Sec. 6, lots 4 and 5.

The areas described aggregate 955.81 acres in Deschutes County, Oregon.

Upon publication of this notice in the **Federal Register**, the mineral interest described above will be segregated to the extent that it will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, or upon rejection of the application, or two years from the date of filing of the application, June 15, 1995, whichever occurs first.

Dated: July 19, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–19306 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–33–P

[CO–956–95–1420–00]

Colorado: Filing of Plats of Survey

July 27, 1995.

The plats of survey of the following described land are officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m. on July 27, 1995.

The plat representing the dependent resurvey of a portion of the north boundary of the Southern Ute Indian Reservation (south boundary of the Ute Ceded Lands), through Township 34 North, Range 9 West (South of the Ute Line), New Mexico Principal Meridian, Group 849, Colorado, was accepted June 6, 1995.

This survey was executed to meet certain administrative needs of the Southern Ute Indian Reservation.

The plat representing the dependent resurvey of portions of the south and west boundaries, and a portion of the subdivisional lines of Township 33 South, Range 59 West, Sixth Principal Meridian, Group 1086, Colorado, was accepted June 8, 1995.

The plat representing the dependent resurvey of a portion of the subdivisional lines of Township 33 South, Range 60 West, Sixth Principal Meridian, Group 1086, Colorado, was accepted June 6, 1995.

These surveys were executed to meet certain administrative needs of the Colorado Department of Transportation and of this Bureau.

The plat representing the dependent resurvey of a portion of Survey No. 261, Townsite of the City of Central, portions of certain mineral claims, and the metes-and-bounds survey of an irregular lot line, in section 12, Township 3 South, Range 73 West, Sixth Principal Meridian, Group 1040, Colorado, was accepted June 13, 1995.

This survey was executed to meet certain administrative needs of this Bureau.

The supplemental plat depicting the aliquot part E½ of the E½ of the NW¼ of the NW¼ and creating new lots 3 and 4 in the NW¼ of the NW¼ of section 33, Township 3 North, Range 76 West, Sixth Principal Meridian, Colorado, was approved June 5, 1995.

This plat was created to meet certain administrative needs of this Bureau.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 95–19307 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–JB–P

National Park Service

Estate of William G. Helis, a Partnership, Jean Lafitte National Historical Park and Preserve, Barataria Preserve Unit, Jefferson Parish, Louisiana; Availability of Plan of Operations and Environmental Assessment, Pipeline Removal and Reclamation and Abandonment of Pipeline Easement

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Estate of William G. Helis, A Partnership a Plan of Operations for plugging and abandonment of Canal Bank and Trust Co. No. 1 Well within the Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, located within Jefferson Parish Louisiana.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the office of the Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 3080, New Orleans, Louisiana and will be sent upon request.

Dated: July 31, 1995.

Robert Belous,

Superintendent. Jean Lafitte, National Historical Park and Preserve.

[FR Doc. 95–19310 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–70–M

Revision of Commercial Use License Program to Incidental Business Permit Program

AGENCY: National Park Service, Interior.

ACTION: Notice and public comment on change from Commercial Use License Program to Incidental Business Permit Program.

SUMMARY: The National Park Service has revised and updated the Commercial Use License Program that permits certain business operators to utilize National Park Service land. This program has been renamed ''Incidental Business Permit Program'' and is incorporated under the Special Use Permitting system. These operators are not concessioners and are not under the purview of Pub. L. 89–249. The new procedures will rescind Chapter 13 of NPS–48 (''The Concessions Guideline'') and corresponding sections of NPS–53 (''Special Park Uses Guideline'') effective as of the date of this publication.

The Commercial Use License Program in effect since 1981 has been used to license certain business operators utilizing areas of the National Park System. Established criteria insured that these operators did not fall under the purview of Pub. L. 89–249 and did not enjoy the privileges granted to concessioners authorized to operate on park land.

The National Park Service established a workgroup to study and evaluate the Commercial Use License program in the national parks. As a result of the findings of that workgroup, it was determined that following revisions were necessary to insure consistency in the program.

1. Incidental Business operations will be evaluated by specific criteria, and authorized under the proper authorizing document.

2. Incidental Business operators will be required as a condition of the permit to provide visitor and revenue information to the parks.

3. Provisions of the permit will insure better resource and visitor protection.

4. Parks will be permitted to utilize cost recovery procedures in monitoring and administering the program.

5. The program will be evaluated annually by a peer board of critique to provide consistency in the program and insure that the program remains functional.

The procedures will function as an internal staff manual and notice of this revision is not required to be published in the **Federal Register** nor is public comment on it required to be sought. However, to assure that the view of all

interested parties is considered, public comment is requested, and the National Park Service will consider all comments received and make appropriate amendments if public comments so warrant.

DATES: Comments must be received on or before September 6, 1995.

ADDRESSES: Comments should be directed to Robert K. Yearout, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Laurie Shaffer, Contract Analyst, Contract Branch, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Copies of the proposed guidelines are available on request.

Roger G. Kennedy,

Director.

[FR Doc. 95–19309 Filed 8–4–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32433]

Chicago and North Western Transportation Company—Construction and Operation Exemption—City of Superior, Douglas County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 Chicago and North Western Railway Company's (CNW) construction and operation of a 2,900-foot line of railroad, subject to conditions to mitigate environmental effects. The proposed line, located in the City of Superior, Douglas County, WI, will connect CNW's Superior rail yard to a transloading coal dock owned by Midwest Energy Resources Company on Lake Superior. By decision served May 11, 1994 (published May 12, 1994, at 59 FR 24710), the Commission conditionally exempted only construction of the line, subject to completion of environmental review and a further decision. The environmental analysis is now completed.

DATES: This exemption is effective on August 7, 1995, subject to the condition that CNW comply with the environmental mitigation measures adopted in the decision regarding construction and operation of the involved rail line. Petitions to reopen must be filed by August 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32433 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: Stuart F. Gassner, One North Western Center, Chicago, IL 60606.

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 obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4537/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–19368 Filed 8–4–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Interstate Bakeries Corp. and Continental Baking Co.; 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)–(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division in a civil antitrust case, *United States* v. *Interstate Bakeries Corp. and Continental Baking Co.*, Civ. No. 95 C 4194.

On July 20, 1995, the United States filed a Complaint seeking to enjoin a transaction by which Interstate agreed to acquire Continental. Continental and Interstate are the country's first and third largest wholesale commercial bakers and producers of white pan bread (''plain old white bread''). The Complaint alleged that the proposed acquisition would substantially lessen competition in the sale of white pan bread in five markets (Chicago, Milwaukee, central Illinois (Springfield, Peoria, Champaign/Urbana), San Diego, and Los Angeles) in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment requires defendants to divest such brand names and possibly other assets as are necessary to create a new competitor in the sale of white pan bread in each of the five markets. If the required divestitures are not accomplished within nine months, the Court will appoint a trustee to complete the sales. The Hold Separate Stipulation and Order is intended to facilitate the divestitures by requiring defendants to hold separate and maintain certain products and plans as economically viable assets pending possible divestiture. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 4000, Washington, DC 20530 (telephone: (202) 307–0207). Comments must be received within sixty days.

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S.Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2841), and at the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn, 20th Floor, Chicago, Illinois, 60604. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

Civil Action No.: 95C 4194
Filed: 7/20/95
Judge Manning

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Stipulation and Order:

A. ''Associated Assets'' means:

(1) All labels used on White Pan Bread in the Relevant Territories;

(2) All land, buildings, fixtures, machinery and equipment related to the plant;

(3) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of White Pan Bread in the Relevant Territories; and

(4) All route books, customer lists, and other records used in the defendants' day-to-distribution of White Pan Bread in the Relevant Terrorities.

B. ''Label'' means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress, the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the label; and packagaging, marketing and distribution knowhow and documentation, such as customer lists and route maps, associated with the brand.

C. ''Continental'' means Continental Baking Company, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

D. ''Interstate'' means Interstate Bakeries Corporation, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

E. ''Interstate's Chicago Plant'' means the Interstate bread production facility located in Chicago, Illinois and its Associated Assets.

F. ''Interstate's Southern California Plant'' means the Interstate bread production facility located in Glendale, California and its Associated Assets.

G. ''Interstate's Central Illinois Plants'' means the Interstate bread production facility located in Decatur, Illinois and the Interstate bread production facility located in Peoria, Illinois and their Associated Assets.

H. ''Continental's Chicago Plant'' means the Continental bread production facility located in Hodgkins, Illinois and its Associated Assets.

I. ''Continental's Southern California Plant'' means the Continental bread production facility located in Pomona, California and its Associated Assets.

J. ''Eastern Wisconsin Territory'' means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

K. ''Chicago Territory'' means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

L. ''Central Illinois Territory'' means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

M. ''Southern California Territory'' means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

N. ''Relevant Territories'' means the Chicago, Eastern Wisconsin, Southern California, and Central Illinois Territories.

O. ''White Pan Bread'' means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of Continental by Interstate. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that certain Interstate and Continental labels, plants and marketing and sales operations that compete in the Relevant Territories are maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

III. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate Continental's Chicago and Southern California Plants as independent competitors with management and operations held entirely separate, distinct and apart from those of Interstate. Defendants shall not coordinate the production, marketing or terms of sale of Continental's bread products with Interstate's bread products in the Relevant Territories. Within thirty (30) days of the entering of this Order, defendants shall inform plaintiff of steps taken to comply with this provision.

B. Defendants shall take all steps necessary to ensure that Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants will be maintained as economically viable, ongoing business concerns. Defendants shall use all reasonable efforts to maintain and increase the sales of Interstate's and Continental's White Pan Bread and other bread products in the Relevant Territories and otherwise maintain these businesses as active competitors in the Relevant Territories.

C. Defendants shall provide capital and provide and maintain sufficient working capital to maintain Interstate's Chicago, Southern California, and Central Illinois Plants and Continental's Chicago and Southern California Plants as economically viable, ongoing businesses, consistent with the requirements of Sections III(A) and (B).

D. Defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

E. Defendants shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Hold Separate Stipulation and Order, ordinary wear and tear excepted.

F. Defendant shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants.

G. The production, pricing and promotional plans specific to Interstate's Chicago, Southern California, or Central Illinois Plants will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Continental's marketing and sales of

White Pan Bread in any Relevant Territory; and the production, pricing and promotional plans specific to Continental's Chicago or Southern California Plants, or to Continental's marketing and sales of White Pan Bread in any Relevant Territory, will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Interstate's marketing and sales of White Pan Bread in any Relevant Territory, unless needed to comply with other provisions of this Order.

H. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Sections III(A) and (B), defendants shall not transfer or terminate, or alter any current employment or salary agreements for, any executive-level management, sales, marketing, or engineering personnel of Interstate's Chicago, Southern California, or Central Illinois Plants or Continental's Chicago or Southern California Plants.

I. Defendants shall not in anyway inhibit the ability of any licensee or purchaser under the Final Judgment from hiring any person currently an employee of defendants' at any plant that may be divested pursuant to the Final Judgment.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divesture pursuant to the Final Judgment to a suitable purchaser or purchasers.

K. This Hold Separate Stipulation and Order shall remain in effect as to each Relevant Territory pending consummation of the divestitures contemplated by the proposed Final Judgment as to that Relevant Territory, or until further Order of the Court.

Respectfully submitted,

Dated:

For Plaintiff United States of America:
Anne K. Bingaman,
Assistant Attorney General.
Arnold C. Celnicker
Lawrence R. Fullerton
Charles R. Schwidde
Charles Biggio
Anthony Harris
Illinois Bar #01133713
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James B. Burns,
U.S. Attorney, N.D. Illinois.
For Defendant Interstate Bakeries Corporation
Terry M. Grimm
For Defendant Continental Baking Company
Jay W. Brown

It is so ordered this 20th day of July, 1995.
Blanche M. Manning,
United States District Court Judge.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Illinois.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon 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 (b)–(h)), and 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 the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. The parties shall abide by and comply with the provisions of the Hold Separate Stipulation and Order pending entry of the Hold Separate Stipulation and Order, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

Respectfully submitted.

For Plaintiff United States of America
Anne K. Bingaman,
Assistant Attorney General.
Arnold C. Celnicker
Lawrence R. Fullerton
Charles R. Schwidde
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James B. Burns,
U.S. Attorney, N.D. Illinois.
For Defendant Interstate Bakeries Corporation
Terry M. Grimm
For Defendant Continental Baking Company
Jay W. Brown

So Ordered.

United States District Judge

Final Judgment

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on July 20, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain rights or assets and prompt implementation of the Hold Separate Stipulation And Order to assure that competition is not substantially lessened are the essence of this agreement;

AND WHEREAS, the parties intend to require defendants to make certain

divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread;

AND WHEREAS, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as ground for asking the Court to modify any of the divestiture provisions contained below;

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 over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Interstate'' means defendant Interstate Bakeries Corporation, a Delaware corporation with its headquarters in Kansas City, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. ''Continental'' means defendant Continental Baking Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. ''Bread Assets'' means:

(1) Either the Mrs. Karl's Label or the Wonder Label for all bread products except White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for all bread products except White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for all bread products except White Pan Bread in the Central Illinois Territory;

(4) Either the Weber's Label or the Wonder Label for all bread products except White Pan Bread in the Southern California Territory;

(5) Either the Interstate plant located in Chicago, Illinois or the Continental plant located in Hodgkins, Illinois;

(6) Either the Interstate plant located in Glendale, California or the Continental plant located in Pomona, California;

(7) Either the Interstate plant located in Decatur, Illinois or the Interstate plant located in Peoria, Illinois;

(8) All land, buildings, fixtures, machinery and equipment related to the above plants;

(9) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of bread products under the Relevant Labels in the Relevant Territories; and

(10) All route books, customer lists, and other records used in the defendants' day-to-day distribution of bread products under the Relevant Labels in the Relevant Territories.

D. ''Label'' means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress; the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the brand; and packaging, marketing and distribution know how and documentation, such as customer lists and route maps, associated with the brand.

E. ''Eastern Wisconsin Territory'' means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

F. ''Chicago Territory'' means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

G. ''Central Illinois Territory'' means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

H. ''Southern California Territory'' means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

I. ''Relevant Labels'' means:

(1) Either the Mrs. Karl's Label or the Wonder Label for White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for White Pan Bread in the Central Illinois Territory; and

(4) Either the Weber's Label or the Wonder Label for White Pan Bread in the Southern California Territory.

J. ''Relevant Territories'' means the Chicago Territory, the Eastern Wisconsin Territory, the Central Illinois Territory and the Southern California Territory.

K. ''White Pan Bread'' means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

III. Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and 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. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Labels and the Bread Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. The provisions of Section IV through VIII of this Final Judgment shall not be effective until the consummation of the acquisition of Continental by Interstate.

IV. Divestiture

A. Defendants are hereby ordered and directed, within nine (9) months of entry of this Final Judgment, to grant to one or more purchasers a perpetual, royalty-free, assignable, transferable, exclusive license to use the Relevant Labels to produce (or have produced for it) and sell White Pan Bread in the Relevant Territories, together with such Bread Assets as are reasonably necessary in order for the acquirer of each Relevant Label to sell White Pan Bread under each respective Relevant Label at a level substantially equivalent to the average level of White Pan Bread

sales of each respective Relevant Label in each Relevant Territory over the preceding year, and otherwise to remain a viable competitor in the White Pan Bread market in each Relevant Territory. Defendants shall cease using a Relevant Label within five (5) days of when a purchaser commences its use.

B. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. Plaintiff may, in its sole discretion, extend the time period for divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known, by usual and customary means, the availability of the Relevant Labels. The defendants shall provide any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Labels, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall provide such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Labels to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

D. Unless the plaintiff otherwise consents, divestiture under Section IV(A), or by the trustee appointed pursuant to Section V, shall include such Bread Assets and be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Relevant Labels can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of White Pan Bread at wholesale to retail grocery stores and other customers. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (3) none of the terms of any agreements between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively.

V. Appointment of Trustee

A. If defendants have not accomplished the divestiture required by Section IV within the time specified therein, defendants shall notify plaintiff of that fact in writing. Within ten (10) calendar days of that date, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiff, within ten (10) calendar days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiff, plaintiff shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture as specified in Section IV(A). The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the Bread Assets in addition to the Relevant Labels.

C. After the trustee's appointment has become effective, only the trustee shall have the right to license the Relevant Labels and to sell the Bread Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the licensing of the Relevant Labels or the sale of the Bread Assets by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Labels or the Bread Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of defendants' overall businesses, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Labels and the Bread Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Labels and the Bread Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in

acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring, any interest in the Relevant Labels or the Bread Assets, and shall describe in details each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the terms of the trustee's appointment.

VI. Notification

Within two (2) calendar days following execution of a contract, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Labels or in the Bread Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII. Financing

With prior written consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation And Order entered by this Court. Defendants shall take no action that would jeopardize the licensing of the Relevant Labels or the sale of the Bread Assets.

X. Compliance Inspection

Only for the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal office, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal office, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a 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 (including grand jury proceedings), or for the purpose of security compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify 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 defendants mark 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) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal

proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public Interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on July 20, 1995, alleging that the proposed acquisition of Continental Baking Company (''Continental'') by Interstate Bakeries Corporation (''Interstate'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Continental and Interstate are the nation's first and third largest producers of white pan bread.

The Complaint alleges that the combination of these major competitors would substantially lessen competition in the production and sale of white pan bread in five geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Interstate from acquiring control of Continental's assets or otherwise combining them with its own business in these five geographic markets.

At the same time that the suit was filed, a proposed settlement was filed that would permit Interstate to complete its acquisition of Continental's assets in other parts of the country, yet preserve competition in the markets in which the transaction would raise significant competitive concerns. Also filed were a Hold Separate Stipulation and Order, a Stipulation, and a proposed Final Judgment.

The Hold Separate Stipulation and Order would, in essence, require Interstate to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, Continental's bread production and distribution facilities and ancillary assets located in the affected markets will be held separate and apart from, and operated independently of, other Interstate assets and businesses. Moreover, because the Final Judgment may require Interstate to divest either its or Continental's plants and ancillary assets in these geographic markets, until the divestitures are accomplished, Interstate must preserve and maintain both sets of assets as saleable and economically viable, ongoing concerns.

The proposed Final Judgment orders defendants to divest to one or more purchasers certain white pan bread labels in each market. Additional assets to be divested may include bread production and distribution facilities and ancillary assets currently used by Interstate or Continental in each market, as may be required by the purchaser to be able to sell branded white pan bread at levels substantially equivalent to the levels existing before the acquisition. Defendants must complete these divestitures within nine months after entry of the Final Judgment. If they do not, the Court may appoint a trustee to sell the assets.

The United States, Interstate, and Continental have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Interstate, based in Kansas City, Missouri, is the third largest wholesale baker in the United States. In 1994, it reported total sales of $1.1 billion. Interstate has 14,000 employees, operates 31 commercial bakeries, and transacts business in 39 states.

Continental, a subsidiary of St. Louis-based Ralston Purina Company, is the nation's largest wholesale baker. In 1994, Continental reported total sales of $1.95 billion. It employs 22,000 and operates 35 commercial bakeries that service 80% of the nation's population.

On January 8, 1995, Interstate and Continental announced an agreement by which Interstate would acquire Continental from its parent, Ralston Purina Corporation, for cash and stock. This $450 million transaction, which would combine Interstate and Continental, precipitated the government's suit.

B. The White Pan Bread Industry

White pan bread describes the ubiquitous, white, sliced, soft loaf known to most consumers as ''plain old white bread.'' An American household staple, white pan bread is sold in the commercial bread aisle of every grocery store, convenience store, and mass merchandiser. White pan bread differs significantly in product attributes from other types of bread, such as variety bread (e.g., wheat, rye or French) and freshly baked in-store breads, in taste, texture, uses, perceived nutritional value, keeping qualities, and appeal to various groups of consumers. These differing attributes give rise to distinct consumer preferences for each type of bread. Many children, for instance, strongly prefer to eat white pan bread, and hence, a primary use of this bread is for sandwiches in school lunches.

Because of its unique appeal and its distinguishing attributes, a small but significant increase in the price of white pan bread by all producers would not be rendered unprofitable by consumers substituting other breads. White pan bread is, therefore, an appropriate product market in which to assess the competitive effects of the acquisition.

White pan bread is mass produced on high speed production lines by wholesale commercial bakers,[1] who package and sell it to retailers under either their own brand or a private label (i.e., a brand controlled by a grocery chain or buying cooperative). Though physically similar to private label, branded white pan bread is perceived by consumers as fresher, better tasting, and higher quality bread; consequently, consumers often pay a premium of twice as much or more for branded white pan bread. Competition in the white pan bread market takes place on two levels, between different brands of

[1] The bread is also made by so-called ''captive'' bakers, i.e., wholesale commercial bakers which are owned by, and bake bread exclusively for, a grocery chain or wholesale grocery buying cooperative.

white breads and between branded and private label white bread.

C. Competition Between Interstate and Continental

Interstate and Continental compete directly in producing, promoting, and selling both private label and branded white pan bread to grocery retailers, who in turn sell it to consumers. Interstate's popular Butternut, Sunbeam, Mrs. Karl's and Weber's regional brands and Continental's powerhouse national Wonder brand are regarded by consumers as particularly close substitutes, for they are very comparable in appearance, price, taste, perceived quality and freshness.

Interstate and Continental recognize the rivalry between their products in the relevant geographic markets. To avoid losing sales to the other, each has engaged in extensive promotional, couponing, and advertising campaigns that reduce the prices charged for their branded white pan breads to the benefit of consumers. Through these activities, Interstate and Continental have each operated as a significant competitive constraint on the other's prices for white pan bread.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Interstate's acquisition of Continental would remove the competitive constraint and create (or facilitate Interstate's exercise of) market power (i.e., the ability to increase process to consumers) in five relevant geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area.

Specifically, the Complaint alleges that the acquisition would increase concentration significantly in these already highly concentrated, difficult-to-enter markets.[2] Post-acquisition, Interstate would dominate each market. It would control 41% of all sales of white pan bread in the Chicago market; 33% in the Milwaukee market; 62% in the central Illinois market; 64% in the Los Angeles market; and 50% in the San Diego market.

The Complaint alleges that Interstate's acquisition of Continental would likely lead to an increase in prices charged to consumers for white pan bread. Following the acquisition, Interstate likely would unilaterally raise the price of its own brands, Continental's Wonder, or both. Because Interstate and Continental's brands are perceived by consumers as close substitutes, Interstate could pursue such a pricing strategy without losing so much in sales to competing white pan bread brands or to private labels that the price increase would be unprofitable. Interstate could, for instance, profitably impose a significant increase in the price of the Wonder white pan bread, since a substantial portion of any sales lost for that product would be recaptured by increased sales of Interstate's other brands. Similarly, Interstate could increase the prices of any one of its other popular brands of white pan bread, such as Butternut, and much of the sales lost by that brand would be picked up by Interstate's Wonder white bread brand.

Since many consumers consider Interstate and Continental brands to be closer substitutes than most other branded or private label white breads, the competitive discipline provided by rivals after the acquisition would be insufficient to prevent Interstate from significantly increasing the prices now being charged for Interstate and Continental branded white pan bread. Moreover, in response to Interstate's price increases, competing bakers would likely increase their prices of white pan bread.

The Complaint alleges that new entry by other wholesale commercial bakers, or brand repositioning by existing competitors, in any of the five adversely affected geographic markets is unlikely to counteract these anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of white pan bread in each of the five relevant geographic markets. Within nine months after entry of the Final Judgment, defendants will divest certain white pan bread labels, and other assets if necessary, to make an economically viable competitor in the sale of white pan bread in each geographic market. It may well be that all that is required to accomplish this goal is the sale to an existing wholesale baker of the exclusive rights to make and sell white pan bread under either Continental or Interstate's most popular brand. Depending on the purchasers' requirements, however, effective divestiture could also require a sale of Interstate or Continental's production and distribution facilities. Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with the prospective purchaser or with the trustee. If defendants do not accomplish the ordered divestitures within that nine-month time period, the Final Judgment provides that the Court will appoint a trustee to complete the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that Interstate will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate.

The relief sought in the various markets alleged in the Complaint has been tailored to ensure that consumers of white pan bread will not experience unreasonably high prices as a consequence of the acquisition.

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 attorneys' 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 defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants 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.

[2] The Hirfindahl-Hirschman Index (''HHI'') is a widely-used measure of market concentration. Following the acquisition, the approximate post-merger HHIs, calculated from 1994 dollar sales, would be over: 2250 with a change of 766 for Chicago; 1800 with a change of 548 for Milwaukee; 4000 with a change of 974 for central Illinois; 4200 with a change of 2035 for Los Angeles; and 2900 with a change of 1265 for San Diego. Under the *Merger Guidelines*, the Antitrust Division is likely to challenge any acquisition that increases the HHI by 50 points or more in a market in which the post-merger HHI will exceed 1800 points.

The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (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 wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. 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: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants Interstate and Continental. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the Final Judgment will establish viable white pan bread competitors in the geographic markets that would otherwise be adversely affected by the acquisition. Thus, the Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment, ''is in the public interest.'' In making that determination, the court *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 1995–1 Trade Cas. (CCH) p 71,027, at____(Slip op. 26) (D.C. Cir. June 16,. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[3] Rather,

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 1995–1 Trade Cas. at ____ (Slip. op. 22). Precedent requires that

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[5]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 21, 1995.

Respectfully submitted,

Arnold C. Celnicker,

Attorney, Antitrust Division, U.S. Department of Justice.

Certificate of Service

I hereby certify that on July 21, 1995, I caused a copy of the Competitive Impact Statement filed in *U.S.* v. *Interstate Bakeries Corporation and Continental Baking Company,* Civil No. 95 C 4194, to be served, by first class

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[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[4] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also Microsoft,* 1995–1 Trade Cas. at____(Slip op. 23) (whether ''the remedies (obtained in the decree are) so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '') (citations omitted).

[5] *United States* v. *American Tel. and Tel Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky 1985).

mail, postage prepaid on counsel for defendants Interstate Bakeries Corporation and Continental Baking Company, respectively: Terry Grimm, Winston & Strawn, 35 West Wacker Drive, Chicago, IL 60604; and Donald Hibner, Sheppard, Mullin, Richter & Hampton, 48th Floor, 333 South Hope Street, Los Angeles, CA 90071–1448.

Dated: July 21, 1995.

Arnold C. Celnicker,

Attorney, U.S. Department of Justice, Antitrust Division.

[FR Doc. 95–19308 Filed 8–4–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB, and solicitation of public comment.

SUMMARY: NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Title of the information collection:* 10 CFR 35.32 and 35.33, ''Quality Management Program and Misadministrations''.

2. *Current OMB approval number:* 3150–0171.

3. *How often the collection is required:* One time submittal of a quality management program (QMP) for each existing and new licensee, when the QMP is modified, or when new modalities (uses) are added to an existing license. Misadministrations are reported as they occur. Records of written directives, administered dose or dosage, an annual review of the QMP, and recordable events must be maintained in auditable form for 3 years and misadministrations for 5 years.

4. *Who will be required to report:* 10 CFR Part 35 licensees and equivalent Agreement State licensees who use byproduct material in limited diagnostic and therapeutic ranges.

5. *An estimate of the annual number of respondents:* 10 CFR 35.32: 6300 licensees, 10 CFR 35.33: 75 licensees.

6. *An estimate of the total number of hours needed to complete the requirements or request:* Approximately 41,821 hours (Reporting: 35,035 hrs/yr, and Recordkeeping: 6,786 hrs/yr). The Commission is currently reviewing the compatibility requirements for the Agreement States. Relief from certain of these requirements would significantly reduce the burden associated with 10 CFR 35.32. If relief is granted to the Agreement States, the staff will submit a modification of the burden estimate that reflects the changes.

7. *Abstract:* In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or administered to a wrong individual which resulted in unnecessary exposures or inadequate or incorrect diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. To reduce the frequency of such events, the NRC requires licensees to implement a quality management program (10 CFR 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Records and reports to NRC are required for certain errors in the administration of limited diagnostic and therapeutic quantities of byproduct material by medical use licensees. Section 35.33 clarifies these requirements to avoid confusion over whether certain events should be reported to NRC and to help ensure that the licensee is in compliance with the requirements. NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

NRC has revised the definition for ''misadministration'' in 10 CFR 35.2, ''Definitions.'' The revision considerably reduces the number of ''errors'' that must be reported to the NRC or an Agreement State.

Collection of this information will enable the NRC to ascertain whether misadministrations are investigated by the licensee and that corrective action is taken.

Specific comments requested within 60 days:

1. Is the proposed renewal of the collection of information necessary for NRC to properly perform its functions, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Members of the public may obtain, free of charge, a copy of the DRAFT OMB clearance submittal. This information can be obtained by Internet: SLM2@nrc.gov or by calling Sally L. Merchant at (301) 415–7874. The NRC anticipates that the OMB clearance submittal will be available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC, on August 18, 1995.

Comments and questions should be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F 33, Washington, D.C., 20555–0001, (301) 415–7233.

Dated at Rockville, Maryland, this 2nd day of August 1995.

For the U.S. Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–19500 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

Joint Nuclear Regulatory Commission/ Environmental Protection Agency Guidance on the Storage of Mixed Radioactive and Hazardous Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of joint guidance and request for public comment.

SUMMARY: The Nuclear Regulatory Commission and Environmental Protection Agency (EPA) are jointly publishing herein a draft guidance document on the storage of mixed radioactive and hazardous waste (mixed waste). The Agencies are developing this guidance to assist mixed waste generators forced to store their mixed waste, pending the development of adequate treatment and disposal capacity for commercially generated mixed waste. The guidance points out areas of flexibility within NRC and EPA regulations that relate to the storage of mixed waste. Further, the guidance is consistent with the general approach EPA is undertaking as it reviews its current regulatory program. The Agencies are soliciting comments from members of the regulated community, the States, and the public. Interested individuals may provide the Agencies with their comments on the proposed guidance by forwarding their written comments to NRC at the address listed in the **ADDRESSES** section.

DATES: The comment period expires November 6, 1995. Comments received after this date may be considered, if it is practical to do so, but the Agencies are only able to assure consideration for comments received on or before this date.

ADDRESSES: Interested individuals should send their written comments to: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to the Commission's offices at 11545 Rockville Pike (Room T6–D59), Rockville, MD 20555.

BACKGROUND: Mixed waste is defined in the Federal Facility Compliance Act (FFCA) as ''waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954.'' Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal Agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the NRC and EPA.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) established a series of milestones, penalties and incentives to ensure that States or regional compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically addressed in the LLRWPAA, States must ensure adequate disposal capacity for most types of commercially generated low-level radioactive wastes, including mixed wastes. To date, progress in meeting the milestones in the LLRWPAA has been limited. In addition, uncertainties about the amounts and types of mixed waste, along with the complexities in complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for mixed waste. As a result, licensees may be required to store mixed waste on-site until adequate treatment and disposal capacity has been established.

NRC and EPA have developed the draft guidance to assist persons currently storing mixed waste to meet the regulatory requirements of both the AEA and RCRA. The guidance describes procedures that are generally acceptable to both NRC and EPA and that resolve issues of concern that have been identified to the Agencies by licensees. It also addresses similar storage issues identified by the Department of Energy (DOE). The guidance first summarizes the general requirements that licensees must meet to store mixed waste in accordance with NRC and EPA regulations, then addresses specific storage issues that have been brought to the Agencies' attention by mixed waste generators. Finally, the guidance discusses EPA's RCRA enforcement policy for mixed waste in storage. NRC and EPA will review all comments submitted by interested individuals and incorporate appropriate comments into the final guidance document.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6749, or Newman Smith, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, Washington DC 20460, telephone (703) 308–8757.

Dated at Rockville, MD, this 28th day of July, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

Appendix A—Note to Readers

The information contained in this guidance is intended for use by Nuclear Regulatory Commission licensees who may not be familiar with the hazardous waste storage requirements that apply to mixed waste. However, much of the document may also be useful for Federal facilities that generate mixed waste. The guidance assumes that the reader already possesses a valid NRC or Agreement State radioactive materials license, but may not possess an Environmental Protection Agency or authorized State storage permit.

EPA and NRC recognize that the radioactive component of mixed waste may pose hazards from external radiation and from potential internal exposures. Individuals that may be exposed to radiological and non-radiological hazards from mixed waste should be trained in radiation and chemical safety. In addition, mixed waste generators should ensure that the hazards associated with the mixed waste are fully evaluated prior to generating the waste.

This guidance presumes that both radiological and industrial hygiene safety programs are in place and will be followed by the reader. The Agencies did not consult with the Occupational Safety and Health Administration or States agencies responsible for workplace safety in developing this guidance. However, nothing in this guidance supersedes the OSHA safety requirements. NRC licensees are expected to comply with OSHA requirements, as well as all other applicable regulations.

Appendix B—Disclaimer

The policies discussed herein are not final agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. Environmental Protection Agency or Nuclear Regulatory Commission officials may decide to follow the policies provided in this guidance or to act at variance with the policies, based on an analysis of specific site circumstances. The Agencies also reserve the right to change these policies at any time without public notice.

Appendix C—Joint Guidance on the Storage of Mixed Low-Level Radioactive and Hazardous Waste

August 1995.

I. Introduction

Mixed low-level radioactive and hazardous waste (mixed waste) is waste that satisfies the definition of low-level radioactive waste in the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA)[1] and contains hazardous waste that either: (1) Is listed as a hazardous waste in Subpart D of 40 CFR Part 261; or (2) causes the waste to exhibit any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261. Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA).[2] In October 1992, Congress enacted the Federal Facilities Compliance Act (FFCA) which, among other things, added a definition of mixed waste to RCRA. Mixed waste is defined in the FFCA as ''waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954'' (RCRA Section 1004(41), 42 USC 6903(41)).

The LLRWPAA established a series of milestones, penalties and incentives to ensure that States or Regional Compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically

[1] The LLRWPAA defines low-level radioactive waste as ''radioactive material that (A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e.2 of the Atomic Energy Act of 1954 and; (B) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste.''

[2] Note that most radioactive material under the control of the Department of Energy is not regulated by NRC.

addressed in the LLRWPAA, States must ensure adequate disposal capacity for all low-level radioactive wastes, including mixed wastes. To date, progress in meeting the milestones in the LLRWPAA has been limited. In addition, uncertainties about the amounts and types of mixed waste, along with the complexities in complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for mixed waste. As a result, licensees may be required to store mixed waste on-site until adequate treatment and disposal capacity has been established.

This guidance is designed to assist persons currently storing mixed waste to meet the regulatory requirements of both the AEA and RCRA. However, many of the requirements and procedures discussed in this guidance may not be applicable to nuclear power reactor facilities. The guidance describes procedures that are generally acceptable to both NRC and EPA that resolve issues of concern which have been identified to the agencies by licensees. It also addresses similar storage issues identified by the Department of Energy (DOE). The guidance first summarizes the general requirements that licensees must meet to store mixed waste in accordance with NRC and EPA regulations, then addresses specific storage issues that have been brought to the Agencies' attention by mixed waste generators. Finally, the guidance discusses EPA's RCRA enforcement policy for mixed waste in storage.

II. Background

a. Regulatory Authority

In general, NRC or Agreement State licensed facilities that manage mixed waste are subject to the RCRA Subtitle C requirements for hazardous waste in 40 CFR part 124 and parts 260–270 implemented by EPA, or to comparable regulations implemented by States or Territories that are authorized to implement RCRA mixed waste authority. EPA asserted its regulatory authority over the hazardous portion of mixed waste in **Federal Register** Notices on July 3, 1986 and September 23, 1988 (see 51 FR 24504 and 53 FR 37045).

The RCRA Subtitle C program was primarily developed for implementation by the States, and oversight by EPA. As of April 1995, EPA regulates mixed waste in Alaska, Hawaii, Iowa, Wyoming and all U.S. Trust Territories except Guam. Thirty-eight states and one territory (Guam) have been authorized to implement the base RCRA hazardous waste program (i.e., authorized States), and to regulate mixed waste activities (see 51 FR 24504, July 3, 1986). Nine states are authorized for the RCRA base hazardous waste program, but have not been authorized to regulate mixed waste.[3] In these 9 States mixed waste is not regulated by EPA but may be regulated by States under the authority of State law. To understand the roles of EPA and the States in regulating the hazardous portion of mixed waste, the following categories of States or Territories are discussed below:

- States and Territories whose hazardous waste program has not been authorized under RCRA to act ''in lieu of'' the federal RCRA program; these are called ''unauthorized States or Territories'';
- States and Territories with RCRA authorization that have adopted mixed waste authority; and
- States and Territories with RCRA authorization that have *not* adopted mixed waste authority.

As a subset of hazardous waste, mixed waste is regulated by EPA in unauthorized States and Territories (i.e., States and Territories that have not been authorized to implement the RCRA Subtitle C program). Where States and Territories are RCRA authorized and have adopted mixed waste authority, mixed waste is subject to the State's or Territory's authorized hazardous waste program (which may contain regulations more stringent than those in the Federal RCRA program). See Table 1 for a list of States with mixed waste authority as of June 30, 1995. In States or Territories with RCRA authorization that have not yet adopted mixed waste as part of the base RCRA program, mixed waste may be regulated under State or Territorial regulation, but not as a hazardous waste under an authorized RCRA program.

Facilities in RCRA authorized States (whether the State has mixed waste authority or not) should contact their respective State agency to ascertain what State regulations may apply to mixed waste. In addition, facilities in RCRA authorized States should be aware that EPA Regions may share responsibility for implementing the RCRA program with the State, particularly with respect to certain requirements promulgated under the Hazardous and Solid Waste Amendments of 1984 (e.g., corrective action and land disposal restriction requirements), for which the State may not yet be authorized to implement.[4]

Twenty-nine States have signed agreements with NRC enabling the various ''Agreement States'' to regulate source, byproduct, and small quantities of special nuclear material within their boundaries. (see Table 2). Most facilities located in Agreement States are subject to regulatory requirements for radioactive material under State law. This applies to all source, special nuclear, and byproduct material except that from nuclear utilities and fuel cycle facilities, which are subject to NRC's requirements and DOE facilities, which are subject to DOE Orders. While States are required to adopt programs that are comparable with the NRC program, States may have requirements that are more stringent, or are in addition to those from the Federal program. Facility managers should determine whether their State is an NRC Agreement State and determine the scope of the program that has been relinquished by NRC to the State.

In addition to NRC regulated facilities, many DOE facilities may store mixed waste. These facilities are subject to the RCRA Subtitle C requirements or comparable State regulations. DOE Order 5820.2A, ''Radioactive Waste Management,'' and DOE Order 5400.3, ''Hazardous and Radioactive Mixed Waste Program,'' establish policies, guidelines, and minimum requirements under which DOE facilities must manage their radioactive and mixed waste and contaminated facilities. DOE Order 5400.3 excludes byproduct material unless it is mixed with RCRA hazardous waste. Because the storage issues discussed in this document may arise at either NRC-licensed or DOE facilities, this guidance may be useful in addressing mixed waste storage at DOE facilities. However, the primary focus of this guidance is a discussion of the requirements for the storage of mixed waste at NRC-licensed and RCRA-regulated facilities. As summarized in Table 3, regulation of mixed waste may be the responsibility of the State in which a facility is located. To ensure compliance, licensees and permittees should contact their State agencies in RCRA authorized or NRC Agreement States to determine if this or other guidance is applicable.

b. Applicability of RCRA Storage Requirements

NRC licensees who store mixed waste must comply with the requirements of RCRA. Under RCRA regulations, storage is defined as ''the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of, or stored elsewhere''. The specific RCRA storage requirements that apply to licensees are determined by the quantity of hazardous waste generated, how long the licensee stores hazardous waste (including mixed waste) on-site,[5] and the type of unit in which the waste is stored. Licensed facilities are considered RCRA storage facilities that require a RCRA permit[6] (40 CFR 262.34) if they store the waste for:

- More than 90 days, and if the facility's generation rate (both hazardous and mixed waste) is greater than 1000 kilograms per month (or greater than 1 kilogram of acutely hazardous waste/month;[7] or
- More than 180 days, and if the facility's waste generation rate (both hazardous and

[3] The RCRA base hazardous waste program is the RCRA program initially made available for final authorization, and includes Federal regulations up to July 26, 1982. Authorized States revise their programs to keep pace with Federal program changes that have taken place after 1982 as required by 40 CFR 271.21(e).

[4] For more information on RCRA State authorization and the authorization status of particular States, contact the RCRA/Superfund Hotline at 1–800–424–9346.

[5] ''On-site'' defined by RCRA means ''the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.'' 40 CFR 260.10

[6] Note that facility generation rates must be made on a per month basis for all hazardous wastes generated on-site. Waste averaging (i.e., determining the total amount of waste generated in a year and dividing by 12) is not permitted in calculating monthly generation rates. Likewise, mixed waste cannot be treated separately from other hazardous waste in terms of the generation and accumulation limits.

[7] Acutely hazardous wastes are defined in 40 CFR 261.11(a)(2) and listed in 40 CFR 261.31–33).

mixed waste) is between 100 and 1000 kilograms/month (in addition, the on-site waste accumulation can not exceed 6000 kilograms); or

• Longer than 270 days, if the facility's waste generation rate (both hazardous and mixed waste) is between 100 and 1000 kilograms/month, and if the hazardous waste management facility to which the waste must be shipped is over 200 miles from the licensee's facility.

Licensees have asked questions about the applicability of RCRA regulated quantities. If a facility generates a quantity of low-level mixed waste that, combined with on-site RCRA non-mixed hazardous waste generation, does not exceed 100 kg/mo (or one kilogram of acutely hazardous waste as defined in 40 CFR 261.11(a)(2) and listed in 40 CFR 261.31–33), it qualifies as a conditionally exempt small quantity generator (SQG). As a result, it can dispose of the low-level mixed waste as low-level radioactive waste, if these materials meet the disposal site's waste acceptance criteria (40 CFR 261.5).

RCRA permit requirements are unit-specific and are described in 40 CFR part 264 for permitted facilities and 40 CFR part 265 for interim status facilities. Interim status requirements are self-implementing waste management requirements which are limited to facilities that were already in existence on the date that a new regulation or statutory requirement took effect and which subjected the facility to RCRA. For mixed waste facilities in authorized States, this date generally corresponds to the date that the State received authorization for a mixed waste program, although State requirements may differ.

Under RCRA, persons who store the prescribed quantities of hazardous wastes for less than the times outlined above are considered generators only and need not obtain a storage permit. However, such generators are still subject to the storage requirements of 40 CFR 262.34 (a) or (d),[8] unless they qualify for the conditionally exempt small quantity generator (SQG) exemption in 40 CFR 261.5. A generator qualifies for this exemption if he generates no more than 100 kilograms of hazardous waste (including mixed waste) per month or 1 kilogram of acutely hazardous waste/month. Conditionally exempt SQGs are generally not subject to RCRA regulation as long as they meet the generation and accumulation limits, properly characterize their waste and ensure its proper management. If a SQG accumulates more than 1000 kilograms on-site or if its generation rate exceeds 100 kilograms in any given month, that SQG is no longer conditionally exempt and is subject to RCRA.[9]

Generators may also store up to 55 gallons of hazardous waste (or 1 quart of acutely hazardous waste) in containers at or near the site of generation without a RCRA permit and without regard to the storage time limits. This is known as ''satellite accumulation'' and is governed by 40 CFR 262.34(c)(1). However, any waste in excess of the 55 gallons (or 1 quart of acutely hazardous waste) must be removed from this area within three days of the date that these volumes were exceeded to a central storage area at which time the accumulation times mentioned above take effect. For example, a facility that generates over 1000 kg of hazardous waste per month has up to three days to remove any waste that exceeds the satellite accumulation limit of 55 gallons from the satellite accumulation container and, following that three day period (or after waste is moved to the generator storage area), may store the waste for up to 90 days in accordance with the generator storage provisions of 40 CFR Part 262.34(a). If the waste is stored longer than 90 days, RCRA interim status or a RCRA storage permit is required.

Secondary materials that are stored or accumulated prior to being recycled (used, reused, or reclaimed) may be considered ''accumulated speculatively'' (see 40 CFR sections 261.1(c)(7), 261.1(c)(8), and 261.2(c) and (e)) and thus may be identified as hazardous waste unless the generator or facility accumulating the material can demonstrate that:

• The material is potentially recyclable;

• The material has a feasible means of being recycled; and

• At least 75 percent by weight or volume is recycled or transferred to a different site for recycling during the calendar year.

The EPA Regional Administrator or State Director has authority to approve accumulation that does not meet these limits, upon request for a variance (see 40 CFR 260.31(a)).

These restrictions on speculative accumulation may bring materials into the hazardous waste universe that have in the past been considered recyclable (see 40 CFR 261.2(d) and 261.2(e)). The intent of having such a requirement is to prevent the long term storage and mismanagement of hazardous materials under the guise that they may have some potential for being reused or recycled. Readers are encouraged to review 40 CFR 261.2 and 261.6 for further information on accumulation.

c. Storage Time Limitations Under the Land Disposal Restrictions and Variances

EPA's Land Disposal Restriction (LDR) regulations (i.e., the requirements in 40 CFR 268.50 that prohibit the land disposal of hazardous wastes without prior treatment) prohibit the storage of LDR restricted hazardous wastes (including mixed wastes) except when storage is ''solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal''. Wastes that satisfy this accumulation requirement, may be stored in tanks, containers, or containment buildings on-site.[10] Waste may be stored without regard to the storage prohibition if it has been treated to meet EPA treatment standards or if the waste is not subject to, or is exempt from, the LDRs because of an extension or a specific exemption from the LDRs (e.g., conditionally exempt small quantity generator wastes). In addition, wastes that have been placed into storage prior to an applicable LDR effective date are not subject to the prohibitions on storage. However, once such wastes are removed from storage, these wastes are subject to treatment standards and other applicable LDR requirements (51 FR 40577, November 7, 1986).

The storage prohibition also is not in effect for waste subject to a variance from the Land Disposal Restrictions. EPA grants three general types of variances from the LDRs: (1) variances that delay the effective date of a prohibition (e.g., a variance based on the lack of capacity to treat, recover or dispose hazardous waste); (2) variances from the prohibition based on a ''no-migration'' determination; and (3) a treatability variance from a specific treatment standard. For more information on these variances, please consult the EPA guidance document entitled ''Guidance on the Land Disposal Restrictions' Effects on Storage and Disposal of Commercial Mixed Waste'' (OSWER Directive 9555.00–01, September 28, 1990) available from NRC or EPA.

d. RCRA Permits and NRC License Amendments

Storage of all radioactive waste, including mixed waste, should be carried out in such a manner that ensures that the stored waste does not create a radiological hazard to surrounding areas, increase the potential for a release of radioactive materials to unrestricted areas, or pose an increased hazard to facility personnel. The physical, chemical, and radiological characteristics of the waste, as well as any other characteristics that could pose a potential health and safety problem in the storage area should be identified and evaluated by the licensee prior to developing the NRC license application or amendment request. Provisions for material security and inventory, fire protection, effluent controls, effluent monitoring, shielding and area radiological controls should be included in the NRC license application or amendment request. This application or request should include written procedures for radiological surveys, periodic audits, and inspections, as well as an effective contingency plan to address the repackaging of damaged or deteriorating containers. The elements of the plan should take into account the isotopes, waste forms, and quantities to be stored.

In order to remain in compliance with all regulatory requirements for mixed waste storage, some licensees may need to obtain an EPA (or authorized State) storage permit and/or amend their NRC (or Agreement State)

[8] 40 CFR 262.34(a) addresses the accumulation time and the containment of wastes in containers, tanks, or on drip pads as well as the labelling of these units. 40 CFR 262.34(d) discusses storage requirements for persons generating between 100 and 1000 kilograms of hazardous waste per month.

[9] State regulations pertaining to small quantity generators may vary. Generators should contact the appropriate State hazardous waste regulatory authority to determine the status of SQGs in their State.

[10] Containment buildings (defined as hazardous waste management units where waste is stored or treated) are not considered land disposal units and wastes may be stored in containment buildings without first meeting a treatment standard. Please see 57 FR 37194, August 18, 1992 for more detailed information.

licenses. Examples of instances where an NRC license amendment may be needed include:

- If the total activity of the radioactive material at the facility (both in use, storage, or in waste) would exceed the activity authorized by the facility license;
- If the licensee intends to store the waste in a portion of the facility not authorized by the license;
- If the chemical or physical form of the waste is not authorized by the license; or
- If the storage program is not specifically included within the scope of the authorization.

If a licensee is required to amend its radioactive materials license, NRC will require the licensee to provide sufficient information to evaluate the request and determine if the proposed amendment impacts on the level of protection afforded by the existing license.

NRC License Amendments

While EPA regulations concerning the storage of hazardous waste (40 CFR Part 264, Subpart I and J) are fairly prescriptive, NRC regulations regarding the storage of radioactive waste, other than spent fuel, are more performance based. NRC licenses incorporate conditions specific to a facility or licensee that prescribe acceptable practices for the storage of radioactive material. Typically, licensees propose materials management practices to NRC and an evaluation of the proposed practice is performed by NRC prior to approving (or disapproving) the request. These license conditions are then enforceable conditions under which the licensee must conduct his operations.

Those facilities already possessing a radioactive materials license may need to amend their license to store mixed waste. Currently, NRC guidance on LLW storage is contained in several Generic Letters and Information Notices. Appendix A lists these Generic Letters and Information Notices. Licensees contemplating storing mixed waste should review the NRC guidance and contact NRC to determine the information that should be included in a request to store mixed waste at their facility.

[In a memorandum to the Commission dated August 1, 1994 (SECY 94–198), NRC staff provided the Commission with revisions to the existing guidance for on-site storage of low-level radioactive waste. NRC staff expects to finalize the guidance in late 1995. Until the revised guidance is finalized licensees should refer to the guidance discussed in Appendix A. NRC staff expects to include the revised LLW storage guidance in the final joint guidance on mixed waste storage].

If licensees store mixed waste containing special nuclear material, they must address the special properties of the fissile radioisotopes in this waste. Their mixed-waste storage program must address the spatial distribution, geometry, volume, and the concentration of this waste at the storage facility. Strict controls are to be implemented and documented that assure the safe storage of mixed waste containing special nuclear material. Appropriate security measures are to be taken, and documented, to ensure the physical security of special nuclear material at the storage facility. The licensee must comply with all requirements stipulated in their license and with the requirements in 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material.''

RCRA Permits

Licensees who require a RCRA permit for storage must submit an EPA permit application. The application, which is described in 40 CFR Part 270, consists of two parts (Parts A and B). Part A consists of pages 1 and 3 of the Consolidated Permit Applications Form. There is no form for a Part B application. Rather, the Part B application is submitted in narrative form and should contain the information set forth in the applicable sections of 40 CFR 270.14 through 270.29. For new facilities, Parts A and B of the permit must be submitted at least 180 days before physical construction of any new facility is expected to commence.

For existing facilities (i.e., existing on the date that RCRA applicability is established), timely submission of the Notification of Hazardous Materials Activity and a Part A application qualifies the facility for interim status under RCRA section 3005(e). Facilities with interim status are treated as having been issued a RCRA permit until EPA, or a State, makes a final determination on the permit application.

Facilities with interim status still must comply with the interim status regulations set forth in 40 CFR Part 265 or with their State's regulations if it is an EPA authorized State. For such existing facilities the EPA Regional Administrator shall set a date, giving the facility at least six months notice, for submission of the Part B application.

III. Specific Storage Issues

Most mixed waste at operating facilities will be stored in containers or, less frequently, in tanks. EPA requirements for waste stored in tanks and containers are outlined in RCRA Subparts J and I, respectively. In addition, 40 CFR 268.50 addresses the storage of hazardous wastes restricted from land disposal under Subpart C of RCRA. Unlike EPA regulations, NRC's requirements for waste storage are not specific with respect to the type of storage unit (i.e., container, tank, waste pile, etc.), except for tanks at nuclear power reactors, but are based on the type of waste (i.e, wet or dry) and are outlined in 10 CFR Parts 20, 30, 40, 50, 70, and 73. Licensees will be required to comply with container and tank requirements of both EPA and NRC.

Licensees have identified a variety of issues associated with the storage of mixed waste that have caused them concern. Licensees have indicated to both NRC and EPA that they believe strict adherence to the regulations of both agencies may not be possible because of perceived inconsistencies between the two sets of regulatory requirements.[11] Where radioactive wastes (or wastes suspected of being radioactive) are involved in storage, it has been suggested that the NRC's storage requirements may run counter to the aims of RCRA. Neither EPA nor NRC is aware of any specific instances where RCRA compliance has been inconsistent with the AEA. However, both agencies acknowledge that an inconsistency may occur. A licensee or applicant who suspects that an inconsistency may exist should contact both NRC, EPA, or any other AEA and RCRA regulatory agencies. These regulatory agencies should deliberate and consult on whether there is an unresolvable inconsistency and, if one exists, they should attempt to fashion the necessary relief from the particular RCRA provision that gives rise to the inconsistency. However, all other RCRA regulatory requirements would apply. That is, a finding by the regulatory agencies that an inconsistency exists does not relieve a hazardous waste facility owner/operator of the responsibility to ensure that the mixed waste is managed in accordance with all other applicable RCRA regulatory requirements. Owners/operators of mixed waste facilities are encouraged to address and document this potential situation and its resolution in the RCRA facility waste analysis plan which must be submitted with the Part B permit application, or addressed in a permit modification.

Licensees have identified four issues where compliance with both agencies' regulations has caused concern or confusion. These issues are:

(1) Decay-in-storage of mixed waste;

(2) Inspection/surveillance requirements for mixed waste in storage;

(3) Allowable storage practices for stored mixed waste; and

(4) Waste compatibility, segregation and spacing requirements.

Decay-in-Storage of Mixed Waste

A large portion of the radioactive waste (and mixed waste) generated by medical and biomedical research institutions contains radionuclides with relatively short half-lives. These short lived radionuclides are especially prevalent in the combustible dry waste, aqueous wastes, and animal carcass wastes generated by medical and academic institutions. NRC generally allows medical facilities to store waste containing radionuclides with half-lives of less than 65 days until 10 half-lives have elapsed and the radiation emitted from the unshielded surface of the waste, as measured with an appropriate survey instrument, is indistinguishable from background levels. The waste may then be disposed of as non-radioactive waste after ensuring that all radioactive material labels are rendered unrecognizable (see 10 CFR 35.92). Radioactive waste may also be stored for decay under certain circumstances in accordance with 10 CFR 20.2001. For mixed waste, storage for decay is particularly advantageous, since the waste may be managed solely as a hazardous waste after the radionuclides decay to background levels. Thus, the management and regulation of these mixed wastes are greatly simplified by the availability of storage for decay.

Before disposing of the waste after decay, the licensee must survey the waste using an appropriate survey instrument, and

[11] The Agencies consider an inconsistency to occur when compliance with one statute or set of implementing regulations would necessarily cause non-compliance with the other.

technique, and demonstrate that the radiation emitted from the waste is indistinguishable from representative background levels. Licensees, not already authorized to hold wastes for decay-in-storage, that wish to hold mixed waste for decay-in-storage may need to obtain a license amendment from NRC prior to storing the mixed waste. Many licensees in possession of mixed waste and who use decay-in-storage will be required to obtain an amendment to store the mixed waste for decay prior to disposal as hazardous waste. The following should be included in a license amendment request to NRC:

- A description of the survey procedures to be used during storage and prior to release of the waste to a hazardous waste-only facility,
- A description of the procedures for segregating and tracking waste from placement in storage to release to a hazardous waste-only facility,
- A commitment that waste will be held for a minimum of ten half-lives prior to performing the final radiation survey before release to a hazardous waste-only facility and
- A statement that the decayed radioactive waste will not be released to a hazardous waste-only facility unless the radiation emitted from the waste is indistinguishable from background radiation.

While NRC licensing amendments address the management of the radioactive component of these wastes, they generally have no effect on the applicable RCRA storage provisions. Storage requirements under RCRA should ideally be implemented in a manner that provides appropriate protection of health and the environment, without setting up undue impediments to well conducted decay programs.

Under RCRA, a storage permit (or interim status) is generally required to manage the wastes during the decay period if this storage period exceeds 90 days. However, even with such a permit, a question has been raised as to whether accumulation of mixed wastes during the decay period violates the Land Disposal Restrictions (LDR) storage prohibition in RCRA section 3004(j). This latter provision, and regulations at 40 CFR 268.50, generally prohibit generators and owner/operators of hazardous waste treatment, storage, or disposal facilities from storing hazardous wastes that are restricted from land disposal under the LDR program, except when storage is ''solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal''. Exceptions are recognized for hazardous wastes that have been treated to LDR treatment specifications, and for wastes exempted by virtue of one of the LDR variance authorities, i.e., a capacity variance, a no migration variance, or a case-by-case extension. In addition, RCRA and regulations at 40 CFR 268.50(a) define a conditional exception for on-site storage in tanks or containers, where the generator complies with the regulations at 40 CFR 262.34 requirements, and the storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.

EPA believes that the limited periods of approved decay-in-storage of mixed waste do not violate the RCRA section 3004(j) storage prohibition. EPA believes this interpretation is supported by the following consideration.

EPA considers decay-in-storage a necessary and useful part of the best demonstrated available technology (BDAT) treatment process. ''Decay-in-storage'' meets the definition of ''treatment'' in 40 CFR 260.10, insofar as it is a method or technique designed to change the physical character or composition (amount of radioactivity) in the mixed wastes. Decay-in-storage subsequently makes the treatment of the hazardous constituents safer, and renders them safer for transport.

As a result, the LDR storage prohibition does not apply to mixed waste held pursuant to an NRC approved decay-in-storage program during the period of decay. EPA emphasizes that the inapplicability of the storage prohibition is coincident with the period of decay; once the waste has decayed to levels that are indistinguishable from background levels, the RCRA 3004(j) and 40 CFR 268.50 provisions apply fully to any additional storage that occurs prior to completing the required BDAT treatment.

Inspection/Surveillance Requirements for Stored Mixed Waste

Under RCRA, waste storage containers must be inspected on a weekly basis (40 CFR 264.174) and certain above-ground portions of waste storage tanks on a daily basis (40 CFR 264.195(b)(1)). The purpose of these inspections is to detect leakage from or deterioration of containers. NRC recommends that waste in storage be inspected on at least a quarterly basis. Licensees have expressed concerns that daily or weekly ''walk-through'' inspections of high-activity mixed waste may result in increased exposures to workers at their facilities and thus violate their As Low as Reasonably Achievable (ALARA) programs.

The RCRA regulations and permit guidance do not require that inspections of mixed waste in storage must be ''walk-through'' inspections. NRC and EPA recognize that increased exposures to workers may result from daily or weekly ''walk through'' inspections and suggest that licensees consider using methods other than walk-through inspections as a means to inspect high-activity mixed waste in storage. Alternative methods for inspection could include the use of remote monitoring devices to determine if a waste container is leaking or television monitors, or other means that are capable of detecting leakage or deterioration. Such alternative methods would comply with the RCRA regulation and would avoid the additional exposures of walk-through inspections. However, these measures should be coupled with a means to promptly locate and segregate or remediate leaking containers.

Flexibility does exist in the RCRA regulations to allow use of such alternative inspection procedures at frequencies specified in the hazardous waste regulations and in the facility's waste analysis plan. Once a facility receives a RCRA permit, these procedures and frequencies are included in the permit. Facilities with existing RCRA permits may have to request a permit modification to change stated inspection procedures (40 CFR 270.42).

NRC licensees that have incorporated specific inspection procedures in their radioactive materials licenses or procedures referred to in license conditions should contact the appropriate NRC or State office to determine if the alternative inspection procedure will require the license to be amended.

Allowable Storage Practices—Dense Packing Practices

NRC currently allows containers with low exposure rates to be used to provide radiation shielding for containers with higher exposure rates. Licensees have expressed concerns that RCRA inspection requirements (40 CFR 264.174, 264.195(b)(1), 265.174, and 265.195(a)(1)) may restrict this use of low exposure rate containers and that such a restriction could cause an increase in worker exposures.

The agencies agree that using low-exposure rate containers for radiation shielding is a reasonable practice. However, concerns about the potential consequences of a container leaking liquid high-activity mixed waste must also be addressed. Containers may be used for radiation shielding, so long as a licensee is capable of detecting, locating the source, and responding to a release within 24 hours of detection to mitigate any significant release. An example of such a capability might include a remote monitoring capability coupled with a means for promptly locating and responding to such a release. So long as the container configuration does not compromise the ability to detect or respond to container leakage or deterioration, the configuration complies with RCRA requirements.

Waste Compatibility, Segregation and Spacing Requirements

In general, any facility that treats, stores or disposes of RCRA hazardous wastes (including mixed waste) must take special measures in handling ignitable, reactive, and potentially incompatible wastes. These measures are outlined in 40 CFR 264.17, including placing ''No smoking'' signs in areas where ignitable or reactive wastes present hazards, separating or protecting wastes from sources of ignition or reaction, and taking special precautions to avoid explosive, heat or gas generating reactions. Facilities must document their compliance with these measures (40 CFR 264.17(c)).

Additional requirements for ignitable, reactive, and incompatible wastes managed in tanks and containers are found in Subparts I and J of 40 CFR Parts 264 and 265. For example, 40 CFR 264.177 and 265.177 require that wastes managed in containers that are stored close to incompatible wastes or other materials ''must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device'' to prevent ignition or reaction. This separation, however, can occur in the same storage facility and does not necessitate the construction of an entirely separate storage unit. Hazardous wastes also may not be placed in unwashed or contaminated units that previously contained incompatible

wastes or materials (40 CFR 264.177(b)). Appendix V of 40 CFR Part 264 contains examples of potentially incompatible wastes.

RCRA storage facilities must also maintain sufficient aisle space in waste storage areas ''to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency, unless it can be demonstrated to the EPA Regional Administrator that aisle space is not needed for these purposes'' (40 CFR 264.35). In situations where high activity mixed wastes are monitored by remote means and/or stored using dense packing, a new facility has the flexibility to make such a demonstration to the Regional Administrator based (or authorized State) on the need to control the radiation hazard (40 CFR 264.35). Facilities with interim status have the same opportunity to justify why aisle space is not required (40 CFR 265.35). In either case, alternative systems or plans to contain spills, prevent fire and decontaminate equipment may be required by the Regional Administrator. The determination to waive or alter the aisle space requirement will be made on a case-by-case basis and be incorporated into the facility's RCRA permit.

IV. EPA RCRA Enforcement Policy for Mixed Waste in Storage

EPA has recognized that a shortage of adequate treatment and disposal capacity for mixed waste has existed for some time, and that the LDRs present a problem for generators that are unable to treat or dispose of this waste. Accordingly, on August 29, 1991 EPA announced, in the **Federal Register** (56 FR 42730) a policy of giving a reduced priority to civil enforcement of the storage prohibition in section 3004 (j) of RCRA at facilities which generate mixed waste. The policy was limited to civil enforcement and administrative actions resulting solely from the act of storing mixed waste in violation of RCRA section 3004 (j) and to those waste streams for which adequate treatment is not available. The policy was limited in duration and expired on December 31, 1993. On April 20, 1994, EPA announced a two year extension of this policy (59 FR 18813).

This policy applies to facilities which generate less than 1,000 cubic feet per year of land disposal restricted mixed waste and are operated in an environmentally responsible manner. EPA will consider a variety of factors in determining if a facility is conducting its operations in an environmentally responsible manner including:

- Whether the facility can demonstrate that its mixed waste storage areas are in compliance with all applicable RCRA storage facility standards found in 40 CFR 264.73/265.73 and inspection standards found in 40 CFR 264.15/265.15;
- Whether the facility has identified and kept records of its mixed wastes in accordance with 40 CFR 264.73(b)/265.73(b), including sources, waste codes, generation rates and volumes in storage;
- Whether the facility has developed a mixed waste minimization plan (see 58 FR 31114, May 28, 1993) and;
- Whether the facility is prepared to demonstrate the good faith efforts it has undertaken to ascertain the availability of treatment capacity for its wastes.

Licensees are encouraged to review this policy as presented in the **Federal Register** to determine if the flexibility contained in the policy may be appropriate for the operations at their facilities.

V. Conclusion

NRC and EPA recognize that until adequate treatment and disposal capacity is developed, mixed waste generators will face difficulties when storing their mixed waste. Compliance with both agencies' regulatory requirements will require that mixed waste generators become familiar with and take advantage of the flexibility in the existing regulations. Methods to ensure compliance with these regulations may include the use of remote monitoring equipment and shielding high exposure rate containers with low exposure rate containers. Generators that manage land disposal restricted waste and that are unable to find treatment and disposal capacity are likely to meet the conditions for the lower enforcement priority policy described above. If a generator locates adequate treatment and disposal capacity, this capacity should be used rather than engaging in unnecessary storage.

Generators should make every effort to determine if treatment or disposal capacity currently exists for their mixed waste. In order to provide mixed waste generators with information on commercial treatment and disposal capacity, the agencies published NUREG/CR–5938, the National Profile on Commercially Generated Low-Level Radioactive Mixed Waste in December 1992. This NUREG presents information on the volumes, characteristics, and treatability of commercially generated mixed waste and provides valuable information on facilities that currently offer treatment services for mixed waste. Finally, generators should minimize, to the maximum extent practicable, the amount of mixed waste being generated at their facilities. EPA's Risk Reduction Engineering Laboratory (RREL), in coordination with DOE, is currently conducting research in waste minimization techniques that should provide generators with general strategies to minimize their hazardous and mixed waste generation. Mixed waste generators should contact RREL at (513) 569–7391 to obtain information on these general waste minimization techniques. (For additional guidance, refer to 58 FR 31114, May 28, 1993, Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program, or NRC Information Notice 94–23, Guidance to Hazardous, Radioactive and Mixed Waste Generators on the Elements of a Waste Minimization Program, March 25, 1994).

NRC and EPA believe that through cooperation with the regulatory authorities, the use of innovative storage practices, minimizing mixed waste generation, and treating mixed waste to the maximum extent possible, mixed waste generators will be able to manage their mixed waste in a manner that protects the public and the environment until adequate disposal capacity is developed.

TABLE 1.—STATES WITH MIXED WASTE AUTHORITY AS OF JUNE 30, 1995

Alabama	Illinois	Nebraska	Oregon.
Arizona	Indiana	Nevada	South Carolina.
Arkansas	Kansas	New Hampshire	South Dakota.
California	Kentucky	New Mexico	Tennessee.
Colorado	Louisiana	New York	Texas.
Connecticut	Michigan	North Carolina	Utah.
Florida	Minnesota	North Dakota	Vermont.
Georgia	Mississippi	Ohio	Washington.
Guam	Missouri	Oklahoma	Wisconsin.
Idaho	Montana		

TABLE 2.—NRC AGREEMENT STATES, AS OF JUNE 30, 1995

Alabama	Kansas	New York.
Arizona	Kentucky	North Carolina.
Arkansas	Louisiana	North Dakota.
California	Maine	Oregon.
Colorado	Maryland	Rhode Island.
Florida	Mississippi	South Carolina.
Georgia	Nebraska	Tennessee.

TABLE 2.—NRC AGREEMENT STATES, AS OF JUNE 30, 1995—Continued

Illinois Iowa	Nevada New Hampshire New Mexico	Texas. Utah. Washington.

TABLE 3.—RCRA REGULATORY REQUIREMENTS FOR MIXED WASTE

Facility located in	Applicable requirements
State not authorized for base RCRA Program ..	Mixed waste is subject to Federal RCRA Subtitle C requirements. State may impose additional requirements.
State authorized for base RCRA program but not for mixed waste.	Mixed waste is not subject to RCRA Subtitle C requirements. State may impose non-RCRA mixed waste requirements.
State authorized for base RCRA program and mixed waste (mixed waste authorized State).	Mixed waste is subject to authorized State RCRA requirements.*

* Under § 3008(a)(2) of the SWDA, EPA retains enforcement authority in authorized States.

References

40 CFR Part 260, Hazardous Waste Management System: General Title 40, Code of Federal Regulations, § 260.10.

U.S. Environmental Protection Agency and U.S. Nuclear Regulatory Commission, 1989, ''Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions.''

National Profile on Commercially Generated Low-level Radioactive Mixed Waste, NUREG/CR–5938, December 1992.

List of Regulations

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.

Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.

Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.

Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.

Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.

Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.

Nuclear Regulatory Commission Regulations—Standards for Protection Against Radiation, 10 CFR Part 20.

Nuclear Regulatory Commission Regulations—Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.

Nuclear Regulatory Commission Regulation—Domestic Licensing of Source Material, 10 CFR Part 40.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.

Nuclear Regulatory Commission Regulations—Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.

Appendix A

NRC Guidance Documents on the Storage of Radioactive Waste

1. NRC Generic Letter 81–38, Storage of Low-Level Radioactive Wastes at Power Reactor Sites.

2. NRC Generic Letter 85–14, Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility.

3. NRC Information Notice No. 89–13, Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites.

4. NRC Information Notice 90–09, Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.

[FR Doc. 95–19359 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

Membership on the Executive Resources Board

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to the Executive Resources Board for the Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Executive Resources Board.

The following individuals are appointed as members of the NRC Executive Resources Board responsible for providing institutional continuity in executive personnel management by overseeing NRC's Senior Executive Service (SES) and Senior Level System (SLS) merit staffing, succession planning, and position management activities.

New Appointees

Leonard J. Callan, Regional Administrator, Region IV

David L. Morrison, Director, Office of Nuclear Regulatory Research

Carl J. Paperiello, Director, Office of Nuclear Material Safety & Safeguards

In addition to the above new appointments, the following members are continuing on the ERB:

James M. Taylor, Executive Director for Operations

James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research, Office of the Executive Director for Operations

Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations

Karen D. Cyr, General Counsel, Office of General Counsel

William T. Russell, Director, Office of Nuclear Reactor Regulation

Patricia G. Norry, Director, Office of Administration

Paul E. Bird, Director, Office of Personnel

Stuart D. Ebneter, Regional Administrator, Region II

Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data

Carlton R. Stoiber, Director, Office of International Programs

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 415–7516.

Dated at Rockville, Maryland, this 1st day of August, 1995.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board, U.S. Nuclear Regulatory Company.

[FR Doc. 95–19360 Filed 8–4–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7202; 34–36044; International Series Release No. 833]

Exemptions From Rules 10b–6 and 10b–13 for New York Stock Exchange Specialists

August 1, 1995.

Pursuant to delegated authority, on July 31, 1995, the Division of Market Regulation issued a letter (''NYSE Specialist Letter'') granting exemptions from Rules 10b–6 and 10b–13 under the Securities Exchange Act of 1934 to allow New York Stock Exchange specialists to continue to act in their specialist capacity during a distribution of or a tender offer for specialty securities when they otherwise would be subject to those rules because of their affiliates' participation in such a distribution or tender offer. The NYSE Specialist Letter has been issued in the context of a continuing review of Rule 10b–6, and is published to provide notice of the availability of these exemptions.

Margaret H. McFarland,

Deputy Secretary.

April 28, 1995.

Mr. Jonathan G. Katz,
Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549

Dear Mr. Katz: The New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') is writing to request relief from the restrictions of Rule 10b–6 for certain specialist organizations that are affiliated with an organization engaged in a fixed price, firm commitment underwriting (hereafter referred to as a ''distribution'') of a security in which the specialist organization makes a market (a ''specialty stock'') where the two organizations are conducting their respective operations pursuant to NYSE Rule 98.

The Exchange is also requesting relief from the restrictions of Rule 10b–6 and Rule 10b–13 for such specialist organizations that are affiliated with the dealer-manager of an exchange or tender offer of a specialty stock, to the extent the specialist organization is bidding for or purchasing the security in the course of market making activities and not for the purpose of participating in the exchange or tender offer.

The Exchange believes that exemptive relief is appropriate in that (i) NYSE specialist organizations are subject to strict affirmative and negative obligations that restrict the specialist's ability to influence the price of, or condition the market for, a specialty stock; (ii) the Exchange's Rule 98 procedures mandate information barriers that preclude the flow of material non-public market information between a specialist organization and its affiliates; and (iii) the Exchange has appropriate surveillance capability and will conduct detailed surveillances and reviews of trading in conjunction with activities subject to Rule 10b–6 and Rule 10b–13. The Exchange proposes that the exemptive relief sought herein be subject to the conditions specified below. The Exchange undertakes to submit such monitoring reports as the Commission deems appropriate.

Under separate cover, the Exchange is submitting, pursuant to the Commission's Rule 19b–4, a filing to amend NYSE Rule 460.20 to delete references to ''giving up the book'' by an Exchange specialist associated with a broker dealer that has obtained exemptive relief from specified NYSE rules pursuant to NYSE Rule 98.

Current Application of Rule 10b–6 to NYSE Specialists Affiliated With a Participant in a Distribution

NYSE Rule 460.10 prohibits Exchange specialist organizations and their affiliates from engaging in any ''business transaction'' with any company in whose stock the specialist organization is registered. The term ''business transaction'' is interpreted to include, among other matters, participating in a distribution of a security issued by such company.

Exchange Rule 98 provides an exemption from Rule 460.10 for affiliates of a specialist organization that conduct their operations pursuant to the Rule's requirements. The Rule 98 exemption is available only to the *affiliate;* under no circumstances may the specialist organization itself participate in any distribution of a security issued by a company in whose stock the specialist organization is registered.

Today, when an affiliated entity is participating in a distribution of a security stock, the specialist organization is required to withdraw from the market commencing with the applicable Rule 10b–6, ''cooling off'' period until the affiliate has completed its participation in the distribution. NYSE Rule 460.20 provides that the specialist organization must ''give up the book'' (i.e., cease to function as market maker) to an unaffiliated specialist organization, which then assumes all market making responsibilities under NYSE rules, until the approved person (affiliate) has completed its participation in the distribution, at which time the regular specialist organization regains the ''book'' and resumes its market making activities.

Current Application of Rule 10b–3 to NYSE Specialists Affiliated With a Dealer-Manager of an Exchange or Tender Offer

Rule 10b–13 generally prohibits any person making a tender offer from purchasing or making arrangements to purchase the security that is the subject of a tender offer from the time of the public announcement of the tender offer until its expiration. The Exchange understands that the Commission staff appears to have taken the interpretive position the Rule 10b–13 applies generally to the dealer-manager in connection with a tender offer. Thus, under Rule 10b–13, absent exemptive relief, a specialist organization affiliated with such dealer-manager would be prohibited from purchasing any such security that was a specialty stock during an exchange or tender offer.

In September 1992, the Division of Market Regulation granted the Exchange's request that a specialist organization be exempt from Rules 10b–6 and 10b–13, under specified conditions, where an affiliate that had obtained an exemption pursuant to Rule 98 was participating in a distribution or acting as dealer-manager of a tender or exchange offer.[1] The exemption permits the specialist organization to continue to function in its market capacity up until the period commencing five business days before the scheduled termination of the subject offer. The Exchange is seeking herein to broaden the exemption to permit the specialist organization to continue to function in its market making capacity during the entire offer period.

Disparities in Regulation

The Exchange wishes to note that currently there is a disparity between regulatory treatment of over-the-counter market makers and Exchange specialists. Market makers for over-the-counter issuers need not withdraw from the market if they are participating in a distribution of an issuer's securities, as they can continue to make markets subject to the passive market making tests. An NYSE specialist affiliated with a participant in a distribution of specialty security must, however, withdraw from the market, with the market making function then being assumed by a relief specialist. An over-the-counter issuer may view this disparate treatment of market makers as a possible reason to remain listed in the over-the-counter market, as it may perceive less potential disruption of the market making function in the over-the-counter market. Thus, the current regulatory scheme may have a negative impact on the Exchange's ability to attract new listings.

The current disparity in regulation may also operate as a disincentive for large, diversified NYSE member firms to enter, and commit capital to, the specialist business. Such firms may have to weight investment banking opportunities against the potential negative impact, both in terms of issuer relations and operational efficiencies, that may result when an affiliated Specialist is required to cease all market making activity in a specialty security subject to distribution. Such a potential negative impact may make specializing on the NYSE appear to be less attractive as a business proposition.

Affirmative and Negative Obligations of Specialists Under Exchange Rules

Exchange specialists are subject to affirmative and negative obligations with respect to their responsibilities to maintain fair and orderly markets. The negative obligation is codified in Exchange Rule 104, which provides that a specialist shall not effect a proprietary transaction in a specialty stock ''unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.'' The

[1] See letter from William Heyman, Director, Division of Market Regulation, Securities and Exchange Commission to Robert McSweeney, Senior Vice President, Market Surveillance Division, New York Stock Exchange, dated September 15, 1992.

affirmative obligation is codified in Rule 104.10(2), which provides that, ''In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as specialist engage to a reasonable degree under existing circumstances in dealings for his own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.''

The affirmative and negative obligations constitute the foundation of the NYSE's regulation of specialists. They preclude a specialist from trading when there is sufficient buying and selling interest to maintain a fair and orderly market, and require the specialist to trade to minimize short-term disparities in supply and demand. In the context of trading by a specialist while an affiliate is engaged in a distribution of a specialty stock, the negative obligation would bar trading by a specialist to influence the price of the stock when the market is otherwise fair and orderly; the affirmative obligation similarly restricts the ability of a specialist to influence a stock's price by requiring the specialist to react to short-term imbalances in supply and demand, and trade on whichever side of the market will be contra to the overall market trend. Thus, the affirmative and negative obligations significantly inhibit the specialist's ability to effect transactions for market conditioning purposes, which is the type of transaction Rule 10b–6 is intended to prohibit.

We are enclosing as an attachment several pages from the Exchange's Floor Official Manual which discuss the affirmative and negative obligations in detail, and which cross-reference these obligations to specific restrictions on specialist's trading as codified in various provisions of Rule 104.

Rule 98 Information Barriers

As noted above, this request for exemptive relief requires the specialist and affiliated organization to have Exchange approval under NYSE Rule 98 and its Guidelines. NYSE Rule 98 affords exemptive relief for entities in a control relationship with a specialist organization from restrictions in NYSE Rule 104, 104.13, 105, 113.20 and 460.10 that would otherwise be applicable to such entities' transactions in securities in which the specialist organization is registered, or to business transaction with the issuers of such securities. Pursuant to Rule 98 and the implementing guidelines promulgated thereunder, the specialist organization and the affiliated entity must be operated as separate and distinct organizations, and information barriers must be established that place substantial limits on access to, and communication of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations' receiving prior written approval from the Exchange. The functional separation procedures that must be implemented pursuant to Rule 98 preclude the transfer of market-sensitive information between a specialist organization and an affiliate, and minimize potential conflicts of interest whereby one entity might otherwise be inclined to take market action for the purpose of benefiting the other entity.

The Exchange notes that the procedures specified in Rule 98 are consistent with procedures pertaining to the establishment of information barriers, monitoring of such barriers, and notice (in the case of Rule 98, to the Exchange) as described in the Commission's recent exemptive letter to CS Holding (TP File No. 94–267).

Through Exchange Rule 342 (Supervision), each member organization afforded exemptive relief under Rule 98 is required to monitor the procedures adopted to comply with the Guidelines. The Exchange inspects its member organizations afforded such relief on an annual basis for adherence to these supervisory requirements.

Exchange Surveillance

Since the adoption of Rule 10b–6 in 1955, the Exchange has made substantial investments in sophisticated surveillance procedures, including comprehensive audit trail submissions by member firms, and extensive use of software analytics designed to assist in reviewing this and other data available for such surveillance. For example, the Market Analysis and Reconstruction System (MARS) enables Exchange analysts to retrieve and review trading information dynamically and, utilizing information in the Exchange's existing data base, enables these analysts to review trading for anomalies using many combinations of analytical criteria.

The Exchange will conduct surveillance and reviews of specialist trading activity when an affiliated organization is involved in trading activities in a specialty stock subject to Rule 10b–6 or Rule 10b–13 that are specifically designed to highlight such trading for any possible manipulative intent.

Conditions for Exemptive Relief From Rule 10b–6 and Rule 10b–13

The Exchange believes that exemptive relief for a specialist organization affiliated with a participant in a distribution that has obtained exemptive relief pursuant to Rule 98 (an ''Affiliated Specialist'' and an ''Affiliated Broker-Dealer'') would be appropriate under the following conditions:

1. *Issuer Qualification Standards.* The security being distributed, or any security of the same class or series as those securities, or any right to purchase such security, or any security that is the subject of a transaction to which Rule 10b–13 is applicable (''Subject Security'') must qualify for the two business day cooling-off period specified in paragraphs (a)(4) (v), (xi) and (xii)(A) of Rule 10b–6.

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer. The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. *Monitoring of Information Barriers.* During the timeframe commencing with the two business day cooling-off period until the distribution participant has completed its participation in the distribution (''Rule 10b–6 Covered Period''), the Affiliated Specialist and the Affiliated Broker-Dealer must conduct a daily review of transactions in the Subject Securities effected by the Affiliated Specialist and the Affiliated Broker-Dealer, respectively, and by Affiliated Purchasers, as that term is defined in Rule 10b–6(c)(i). Any irregular trades by the Affiliated Specialist, the Affiliated Broker-Dealer, and any Affiliated Purchaser, or suspected breaches of the Information Barriers, must be reported immediately to the NYSE.

4. *Notice of Breach.* Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b–6 Covered Period, it must provide immediate notice to the NYSE of such occurrence. Upon request of the SEC Division of market Regulation (the ''Division''), the Affiliated Specialist and/or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding that breach.

5. *Annual Compliance Review.* a. As part of the annual review specified in Exchange Rule 342.30, each Affiliated Specialist and each Affiliated Broker-Dealer must include a review, conducted by a person independent of the business line being reviewed, of its compliance during the calendar year with the terms of this exemption, including its operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement (''Statement'') that it did not participate in any distributions of a Subject Security during the calendar year if such is the case. Upon a request from the Division, such reviews, management reports, and statements must be supplied to the Division within 15 days of the request.

b. Prior to relying on this exemption, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the review noted in paragraph (a) above. The explanation of the review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the title of the person or group who will conduct the review.

6. *NYSE Surveillance.* The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b–6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b–6 Covered Period and for two business days thereafter. With respect to transactions subject to Rule 10b–13 (the ''Subject Offer''), the NYSE will review all trading by the Affiliated Specialist for the period commencing with public announcement of the Subject Offer, and reconstruct all Affiliated Specialist trading on a daily basis

from the period two business days prior to the commencement of the Subject Offer until the conclusion of the Subject Offer, to detect possible market manipulation and to monitor compliance by the Affiliated Specialist with its obligations under NYSE rules.

7. *Notice of Participation*. Affiliated Broker-Dealer must notify the NYSE of their participation in any distribution during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemption granted herein. At a minimum, the Affiliated Broker-Dealer must provide the NYSE advance notice, on the business days prior to commencement of the Rule 10b–6 cooling-off period, of the dates of the Rule 10b–6 Covered Period and notice of the completion of the distribution.

8. *Recordkeeping.* A. All documents required under this Exemption shall be kept for a period of not less than two years. Reports of annual compliance reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws, or the rules of the Exchange.

9. *Disclosure*. The Affiliated Broker-Dealer shall include in the ''Plan of Distribution'' section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemption granted herein. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemption granted herein.

10. *Analysis*. The NYSE will provide the Division with a written analysis of the operation of the exemption granted herein for the 18-month period commencing from the date exemptive relief is granted.

In all other respects, the Affiliated Specialist and its Affiliated Broker-Dealer must comply with the provisions of Rules 10b–6 and 10b–13. No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers may be effected for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of the exemption herein must comply with the anti-fraud and anti-manipulation provisions of the Securities Exchange Act of 1934, particularly Section 9(a), Section 10(b), and Rule 10b–5 thereunder.

We have enclosed a description of surveillance of specialist trading activity when an affiliate is engaged in a distribution of a specialty security. Confidential treatment is requested pursuant to the Freedom to Information Act and the applicable SEC rules thereunder. Such treatment is requested on the grounds, among others, that the information submitted may contain confidential financial data of private parties as well as sensitive surveillance data, disclosure of which may significantly impair the effectiveness of the Exchange's self-regulatory mechanism. Accordingly, should any request be made for disclosure of these materials, or their contents, we ask that you notify us of this fact immediately, giving us an opportunity to interpose our objections.

Sincerely,

James E. Buck,

Senior Vice President and Secretary.

July 31, 1995.

Mr. James E. Buck,
Senior Vice President and Secretary,
New York Stock Exchange, Inc.,
11 Wall Street,
New York, N.Y. 10005.

Re: Application of Rules 10b–6 and 10b–13 to New York Stock Exchange Specialists
File No. TP 94–293

Dear Mr. Buck: In regard to your letter dated April 28, 1995, as supplemented by conversations with the staff, this response thereto is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in your letter. Each defined term in this letter has the same meaning as defined in your letter unless otherwise noted herein.[1]

Response:

Subject to certain exceptions, Rule 10b–6 under the Securities Exchange Act of 1934 (''Exchange Act'') prohibits persons participating in a distribution of securities and their ''affiliated purchasers,'' as defined in paragraph (c)(6)(i) of Rule 10b–6 (''Affiliated Purchaser''), from bidding for or purchasing, or inducing others to bid for or purchase, such securities, or any security of the same class and series as those securities, or any right to purchase any such security (''Subject Securities''), until they have completed their participating in the distribution. Paragraph (a)(4)(xi) (''exception ix'') of Rule 10b–6 excepts from this prohibition bids for or purchases of the Subject Securities effected by an underwriter, prospective underwriter, or dealer, and their affiliated purchasers, prior to two or nine business days before the commencement of offers or sales of the security to be distributed (''cooling-off period''). Once the cooling-off period commences, Rule 10b–6 requires the distribution participant and its affiliated purchasers to cease bidding for or purchasing the Subject Securities until the distribution participant has completed its participation in the distribution (''Rule 10b–6 Covered Period''), as set forth in paragraph (c)(3) of Rule 10b–6.

Because a New York Stock Exchange, Inc. (''NYSE'') specialist organization (''Affiliated Specialist'') affiliated with a distribution participant would be an Affiliated Purchaser, such Affiliated Specialist would be required to suspend its specialist activities in a Subject Security during the applicable cooling-off period until any affiliated broker-dealer (''Affiliated Broker-Dealer'') has completed its participation in the distribution.

Rule 10b–13, among other things, prohibits a person making a cash tender offer or exchange offer for an equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security or any security which is immediately convertible into or exchangeable for such security, otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration (''Rule 10b–13 Covered Period''). Rule 10b–13 applies to the dealer-manager of the offer (and affiliates of the dealer-manager, including an Affiliated Specialist) because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives.

Currently, to ensure compliance with Rule 10b–6(a)(4)(xi), the NYSE requires the Affiliated Specialist to suspend its specialist activities in a Subject Security during the applicable cooling-off period specified in Rule 10b–6, until the Affiliated Broker-Dealer has completed its participation in the distribution. Specifically, NYSE Rule 460.20 provides that the Affiliated Specialist must ''give up the book'' (*i.e.,* suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules. When the Affiliated Broker-Dealer has completed its participation in the distribution, the Affiliated Specialist may regain the ''book'' and resume its specialist activities in the Subject Security.

On the basis of your representations and the facts presented, particularly the affirmative and negative obligations that govern specialist trading under NYSE Rule 104; the provisions of NYSE Rule 98 that require information barrier policies and procedures that segment information between the Affiliated Specialist and its Affiliated Broker-Dealer; and NYSE surveillance procedures designed to detect specialist activity that may condition the market for a Subject Security during a distribution, and without necessarily concurring in the analysis in your letters, the Commission hereby grants exemptions from Rules 10b–6 and 10b–13 to Affiliated Specialists and their Affiliated Broker-Dealers to permit the Affiliated Specialists to continue to bid for and purchase Subject Securities as a specialist during the Rule 10b–6 Covered Period and the Rule 10b–13 Covered Period, as applicable, subject to the following conditions:

1. *Scope of the Exemptions.* These exemptions apply to mergers, exchange offers, and firm commitment, fixed price offerings that are distributions for purposes of Rule 10b–6, and tender and exchange offers subject to Rule 10b–13. The Subject Securities must have a minimum price of five dollars per share and a minimum public float of 400,000 shares, as computed in accordance with Rule 10b–6(c)(7).

2. *Establishment of Information Barriers.* The Affiliated Specialist and the Affiliated

[1] The letter supersedes our letter dated September 15, 1992, which granted exemptions from Rules 10b–6 and 10b–13 under the Securities Exchange Act of 1934 (''Exchange Act'') to permit specialists affiliated with member broker-dealer organizations to continue to function as specialists in their respective speciality securities in connection with certain mergers and tender or exchange offers in which the affiliated broker-dealer participates in a distribution or acts as dealer-manager of a tender or exchange offer.

Broker-Dealer must have, and implement effectively, written policies and procedures designed to segregate the flow of confidential market-sensitive information, including distribution information, between the Affiliated Specialist and the Affiliated Broker-Dealer (''Information Barriers''). The policies and procedures must have been approved by the NYSE as conforming to the requirements of NYSE Rule 98.

3. *Monitoring of Information Barriers.* During the Rule 10b–6 Covered Period or Rule 10b–13 Covered Period, as applicable, the Affiliated Specialist and Affiliated Broker-Dealer reasonably must monitor for compliance with, and must inquire into possible breaches of, Information Barriers. Any inquiries must be documented, and the underlying records, including any analyses, inter-office memoranda, and employee statements, must be made available promptly to the Division of Market Regulation (''Division'') upon request.

4. *Notice of Breach.* Should any Affiliated Specialist or Affiliated Broker-Dealer discover that there was a breach of the Information Barriers during the Rule 10b–6 Covered Period and Rule 10b–13 Covered Period, as applicable, it must provide immediate notice to the NYSE of such occurrence. Upon request of the Division, the Affiliated Specialist or Affiliated Broker-Dealer shall provide the Division with a written analysis of the circumstances surrounding the breach.

5. *Annual Compliance Review.* a. Each Affiliated Specialist and each Affiliated Broker-Dealer must annually: (i) conduct an independent review (''Annual Compliance Review'') of its compliance during the calendar year with the terms of these exemptions, including their operation and any breaches of information barriers, and report on such review to its management; or (ii) prepare a statement (''Statement'') that it did not participate in any distribution or tender offer involving a Subject Security during the calendar year if such is the case. The Annual Compliance Review must be conducted by an independent person acceptable to the Division, and may be conducted in conjunction with the annual review specified in NYSE Rule 342.30. Upon a request from the Division, such reviews, management reports, and statements shall be supplied to the Division within 15 days of the request.

b. Prior to relying on these exemptions, each Affiliated Broker-Dealer and Affiliated Specialist must submit to the Division a written explanation of how it will comply with the Annual Compliance Review. The explanation of the Annual Compliance Review. The explanation of the Annual Compliance Review must describe, among other things, the review plan, the scope of the review, how the review will be conducted, and the independent person, who will conduct the review.

6. *NYSE Surveillance.* The NYSE shall establish and implement special surveillance procedures to review all trading by the Affiliated Specialist and Affiliated Broker-Dealers in Subject Securities during the Rule 10b–6 Covered Period, including on-line surveillance of trading by the Affiliated Specialist and off-line surveillance of trading by Affiliated Broker-Dealers. The NYSE also will review trading in Subject Securities by the Affiliated Specialist and Affiliated Broker-Dealers for a ten business day period prior to the commencement of the Rule 10b–6 covered Period and for two business days thereafter. With respect to tender offers subject to Rule 10b–13, the NYSE will review all trading by the Affiliated Specialist for the period commencing with a public announcement of the tender offer, and reconstruct all Affiliated Specialist trading on a daily basis from the period as of two business days prior to the commencement of the tender offer until the offer's expiration.

7. *Notice of Participation.* Affiliated Broker-Dealers shall give timely notice to the NYSE of their participation in any distribution or tender offer during which the Affiliated Specialist will continue its specialist activities in Subject Securities pursuant to the exemptions granted herein. The Affiliated Broker-Dealer must provide the NYSE advance notice prior to the commencement of the Rule 10b–6 Covered Period and Rule 10b–13 Covered Period, as applicable, and notice of the completion of the distribution and tender offer, as applicable.

8. *Recordkeeping.* a. All documents required under these exemptions shall be kept for a period of not less than two years. Reports of Annual Compliance Reviews must be retained for a period of three years.

b. None of the requirements of these exemptions shall have any effect upon the obligations of any Affiliated Specialist or Affiliated Broker-Dealer to make, preserve, or produce records pursuant to any other provision of the federal securities laws or other regulatory requirements.

9. *Disclosure.* a. The Affiliated Broker-Dealer shall include in the ''Plan of Distribution'' section of the prospectus, pursuant to Rule 408 under the Securities Act of 1933, a brief description of the activities of the Affiliated Specialist and the exemptions granted herein, as applicable. When an Affiliated Broker-Dealer is participating in a distribution as a managing or co-managing underwriter, the inside front cover page of the prospectus shall display prominently a statement to the effect that the Affiliated Specialist will act in its specialist capacity in the Subject Security pursuant to the exemptions granted herein.

b. At the commencement of the distribution or tender offer, the Affiliated Broker-Dealer shall disclose to the market the fact of the distribution or tender offer and of the Affiliated Specialist's continuation as a specialist in the Subject Security, pursuant to the exemptions granted herein.

10. *Rule 10b–13 Condition.* The Affiliated Specialist may tender only those Subject Securities into an exchange offer that it has acquired in a manner consistent with its specialist obligations under NYSE Rule 104.

11. *Analysis.* The NYSE will provide the Division with a written analysis of the operation of the exemptions granted herein for the 18 month period beginning on the date of this letter. On or before April 30, 1997, the Division will notify the NYSE whether the exemptions should be extended, modified or terminated. Unless otherwise extended, these exemptions will expire on July 31, 1997.

The foregoing exemptions from Rules 10b–6 and 10b–13 are strictly limited to the application of those rules to activities by Affiliated Specialists, acting in their specialist capacity, as described above, and are subject to compliance with the conditions set forth above. These exemptions are subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.[2]

No bids or purchases of Subject Securities by the Affiliated Specialist or Affiliated Broker-Dealers shall be made for the purpose of creating actual, or apparent, active trading in a Subject Security or raising the price of a Subject Security. In addition, Affiliated Specialists and Affiliated Broker-Dealers availing themselves of this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Section 9(a), (10)(b), 14(e) and Rules 10b–5 and 14e–3 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the Affiliated Specialist, the Affiliated Broker-Dealer, and their Affiliated Purchasers. The Commission expresses no view with respect to any other questions that the proposed transaction may raise, including, but not limited to, the applicability of any other federal or state laws.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Brandon Becker,

Director.

[FR Doc. 95–19384 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36040; File No. SR–NYSE–95–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1, Amendment No. 2, and Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Use of an Automated Telephone Voting System by Member Organizations or Their Agents

July 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[2] In 1994, the Commission published a concept release regarding the anti-manipulation regulation of securities distributions, which sought comment on, among other things, the application of Rule 10b–6 to affiliated purchasers. *See* Securities Exchange Act Release No. 33924 (April 19, 1994), 59 FR 21681. In light of the comments received in response to that release, the Commission may determine to undertake rulemaking or other action that may supersede these exemptions.

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 10, 1995, the NYSE submitted to the Commission Amendment No. 1[3] and on June 2, 1995, the NYSE submitted Amendment No. 2[4] to the proposed rule change. The NYSE submitted Amendment No. 3 to the Commission on July 21, 1995.[5] The NYSE has requested accelerated approval of the proposal. The Commission is approving the proposal and soliciting comments.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the use of automated telephone voting systems by member organizations or their proxy agents. The proposed rule would amend NYSE Rule 452.16 and the Listed Company Manual Section 402.08(G) by adding the following test:

Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization of their agent.

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 self-regulatory organization 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 III below. The self-regulatory organization 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

1. Purpose

The Exchange proposes to amend its rules in order to permit member organizations or their proxy agents to accept the use of automated telephone voting systems to receive voting instructions from beneficial owners. The voting process that is presently used by member organizations or their agents provides for the transmission of a proxy statement and a voting authorization form to beneficial owners. The appropriate voting selections are indicated on the form by the beneficial owner and it is mailed back to the member organization or its agent.

The automated telephone voting system permits the beneficial owner to give voting instructions on appropriate corporate proposals through a touch tone telephone.[6] The system utilizes identification codes and provides a validation opportunity in order for the beneficial owner to confirm that voting instructions were received correctly.[7] Beneficial holders will be informed of this new option by specific language at the top of the voting form.[8]

The system is deemed to be less prone to tabulation error than the current system, in addition to being more efficient and cost effective.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–95–15 and should be submitted by August 28, 1995.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Greg Corso, Office of Tender Offers, SEC, dated May 10, 1995. Amendment No. 1 made non-substantive, clarifying changes to the proposal. Amendment No. 1 is further described at note 6, *infra.*

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. Amendment No. 2 is further described at note 7, *infra.*

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon Lawson, Assistant Director, SEC, dated July 21, 1995. Amendment No. 3 is further described at note 8, *infra.*

[6] Amendment No. 1 clarified that beneficial owners still have the option to vote in writing using the voting authorization form. The use of the automated telephone voting system is an alternative to the current system.

[7] Under the NYSE rule, only those automated telephone systems which have been approved by the Exchange may be accepted by member organizations. Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system. Currently, Automatic Data Processing Brokerage Information Services Group provides the only approved system.

[8] Amendment No. 3 provides the specific language that will be added to the voting form for the purpose of informing beneficial owners of their option to vote through an automated telephone voting system. If this language is changed in any manner, the Exchange will contact the Commission and receive approval before using the new language.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to permit the use of automated telephone voting systems by member organizations or their proxy agents is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the use of automated telephone voting systems by member organizations or their proxy agents is consistent with Sections 6[9] and 14[10] of the Act. In particular, the proposal is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest and Section 14 of the Act which sets forth the requirements for the solicitation of proxies.

The NYSE, consistent with Section 14 of the Act, has rules governing the forwarding of proxy materials to beneficial holders. Pursuant to these rules, member firms are required to forward to beneficial holders a proxy statement and a voting authorization form on which the holder would indicate his voting selections and mail the form back to the member firm. The NYSE is now proposing to adopt rules that would permit member firms or their proxy agents to use an Exchange approved automated telephone voting system that operates in a manner consistent with Section 14(a) of the Act as an alternative to written voting instructions.[12] Under the proposed rules, the automated system must at a minimum provide an identification code for beneficial owners and provide an opportunity for beneficial owners to validate instructions to ensure that they were received correctly. In addition, the automated system must provide beneficial owners with the same power and authority to issue, revoke, or otherwise change voting instructions as currently exists for instructions communicated in written form. Further, member organizations or their agents utilizing this method must maintain records of voting which include information sufficient to evidence validity of voting instructions, including the name of the beneficial owner, the date of receipt of the instructions, and the voting instructions as transmitted.

The Commission believes that the proposal will be beneficial to both shareholders and member organizations in fulfilling the proxy requirements under the Act and NYSE rules for several reasons.

First, the use of an automated telephone voting system is a simpler and more efficient means of communicating voting instructions than the current method, which requires a beneficial owner to mail a voting authorization form to the member organization, who would vote the proxy. In this regard, the Commission notes that the proposed rule change will permit beneficial owners to make more timely decisions on corporate matters. For these reasons, the Commission believes that the proposed rule change appropriately gives beneficial owners the ability to use a more convenient and efficient means of providing voting instructions. Second, the use of an automated telephone voting system should prove to be more efficient and accurate than the current system in communicating voting instructions. As the NYSE has indicated, the automated telephone voting system is deemed less prone to tabulation errors than the scanners that are currently used to calculate the votes from the written voting authorization forms.[13] In addition, the automated telephone voting system utilizes identification codes and provides a validation opportunity for the beneficial owner to confirm that voting instructions were received correctly. Finally, the automated telephone voting system is generally viewed as more cost efficient for member organizations because this system can handle a higher volume of voting instructions than the scanners that are currently used to calculate voting instructions from the voting authorization forms.[14]

In summary, the Commission believes that the use of identification codes, the opportunity to confirm that voting instructions were received correctly, and the purported improved accuracy in the new system will be beneficial to shareholders and member organizations and is consistent with the public interest and the protection of investors. Despite these benefits, the Commission notes that the automated voting system is an alternative to the current method of communicating voting instructions by mail. Shareholders will still have the option to choose their preferred method of communicating their voting instructions. In addition, the NYSE rules will continue to ensure that an adequate record is kept of all voting, including voting done through the automated telephone voting system.

The Commission finds good cause for approving the proposed rule change, including Amendments No. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the use of automated telephone voting systems by member organizations or their proxy agent should provide an immediate benefit to investors by affording them a more convenient means of communicating their voting instructions, as well as a more efficient method of transmitting voting instructions. In addition, the Commission notes that the rule change continues to permit investors who wish to communicate their voting instructions by mailing the voting authorization form to the member organization to do so. The use of the automated telephone voting system is merely an alternative to the current system. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule changes as amended.

It is therefore ordered, pursuant to Section 19(b)(2)[15] that the proposed rule change, including Amendments No. 1, 2, and 3, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19385 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78n.

[11] 15 U.S.C. 78f(b)(5).

[12] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, SEC, dated May 25, 1995. As described above, Amendment No. 2 clarifies that the Exchange will consult with the Commission staff to determine whether the proposed system operates in a manner consistent with Section 14(a) of the Act and the rules and regulations thereunder, prior to the Exchange approving any automated system.

[13] Telephone conversation between Gary Tuttle, Director of Securities Operation Department, NYSE, and Elisa Metzger, Senior Counsel, SEC, on June 16, 1995.

[14] *Id.*

[15] 15 U.S.C. 78s(b)(2).

[16] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–36043; File No. SR–NYSE–95–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Amendments to 460.20

August 1, 1995.

I. Introduction

On May 26, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 460.20 to require an associated specialist of an approved person acting as an underwriter in a distribution of a security in which the associated specialist is registered to ''give up the book'' if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35929 (June 30, 1995), 60 FR 35759 (July 11, 1995). No comments were received on the proposal. On July 27, 1995, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] This order approves the proposed rule change, including Amendment No. 1, on an accelerated basis.

II. Description of Proposal

Rule 10b–6 under the Act requires a specialist organization to withdraw from the market when an affiliated entity is participating in a distribution of a security in which the specialist organization is registered commencing with the applicable cooling off period specified in Rule 10b–6 until the affiliate has completed its participation in the distribution.[4] Currently, to ensure compliance with Rule 10b–6, NYSE Rule 460.20 requires a specialist organization to ''give up the book'' (*i.e.* suspend its specialist activities) to a specialist organization unaffiliated with any distribution participant, which then assumes all specialist responsibilities under NYSE rules until the approved person (affiliate) has completed its participating in the distribution.[5] At the conclusion of the approved person's participation, the regular specialist organization regains the ''book'' and resumes its specialist activities.

The Exchange has filed a request with the Division of Market Regulation (''Division''), separately from this proposed rule change, for exemptive relief from certain provisions of Rules 10b–6 and 10b–13[6] (''Petition for Exemptive Relief'').[7] This request was based on competitive concerns in light of the amendments to Rule 10b–6 and new Rule 10b–6A that permit NASD market makers to continue to make markets in a stock while participating in an underwriting of that stock, subject to several restrictions on their level of market making activity (''passive market making'').[8] In this regard, the Exchange believed that the failure to provide some type of exemptive relief from Rule 10b–6 for NYSE specialist units affiliated with underwriting firms may have a detrimental effect on the Exchange's ability to compete for issuer listings and on the willingness of large firms to invest capital in the specialist business. The Exchange further believed that the Commissions's passive market making restrictions could not be extended appropriately to Exchange specialists, who are subject to an affirmative obligation to deal when necessary to maintain a fair and orderly market. The Exchange believed, however, that exemptive relief was appropriate in light of the restrictions on the flow of information between the affiliated specialists and its approved person contained in Exchange Rule 98[9] along with the additional safeguards specified in its Petition for Exemptive Relief.

Under this proposal, the Exchange proposes to replace the current ''give up the book'' provision with one that would make NYSE Rule 460.20 compatible with the Exchange's Petition for Exemptive Relief. The proposed rule change would allow an affiliated specialist to continue to make a market in the securities in which the affiliated

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Senior Counsel, SEC, dated July 26, 1995. In Amendment No. 1, the Exchange amended the NYSE rule to reflect more accurately the requirements under Rules 10b–6 and 10b–13 for specialists to give up the book if the specialists and their approved persons do not have an exemption from such rules. *See infra* note 10 and accompanying text.

[4] Rule 10b–6 is an anti-manipulation rule that, subject to certain exceptions, prohibits persons engaged in a distribution of securities from bidding for or purchasing, or inducing others to purchase, such securities, any security of the same class and series as those securities, or any right to purchase any such security (''related securities'') until they have completed their participation in a distribution. The provisions of Rule 10b–6 apply to issuers, selling shareholders, underwriters, prospective underwriters, dealers, brokers, and other persons who have agreed to participate or are participating in the distribution, as defined in Rule 10b–6(c)(5), and their ''affiliated purchasers,'' as defined in Rule 10b–6(c)(6), including broker-dealer affiliates. The applicable cooling off period is described in (xi) and (xii) of Rule 10b–6(a)(4). *See* 17 CFR 240.10b–6.

[5] Exchange Rule 460.10 prohibits an approved person of a specialist organization from engaging in any business transaction with any company whose stock the specialist is registered or accept a finder's fee from such company. *See* NYSE Rule 460. NYSE Rule 98, however, affords exemptive relief for approved persons of a specialist organization from restrictions found in various NYSE rules, including certain provisions of rule 460, that would otherwise be applicable to such approved persons' transactions in NYSE securities in which the specialist organization is registered or to business transactions with the issuers of such securities. *See* NYSE Rule 98, *infra* note 9. Therefore, an approved person of a specialist organization must be entitled to an exemption from Rule 460.10 pursuant to Rule 98 to act as an underwriter in any capacity for a distribution of securities in which an associated specialist is registered.

[6] Rule 10b–13 under the Act, among other things, prohibits a person making a tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase any such security (or any security that is immediately convertible or exchangeable for such security), otherwise than pursuant to the offer, from the time the offer is publicly announced until its expiration, including any extension thereof. Rule 10b–13 also applies to the dealer-manager of a tender offer because the dealer-manager acts as the agent of the bidder to facilitate the bidder's objectives. *See* 17 CFR 240.10b–13.

The Exchange is seeking relief from Rule 10b–13 to allow affiliated specialists to continue their market making functions in their respective specialty securities in connection with certain mergers or tender or exchange offers in which an affiliated broker-dealer is participating.

[7] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated April 28, 1995.

[8] *See* Securities Exchange Act Release No. 32117 (Apr. 8, 1993), 58 FR 19528. In general, Rule 10b–6A permits ''passive market making'' in connection with the distributions of certain securities quoted on the Nasdaq Stock Market during the Rule 10b–6 cooling-off period, the period when the rule's provisions otherwise would prohibit such transactions. A passive market maker's bids and purchases, however, are limited to the highest current independent bid *i.e.*, a bid of a market maker who is not participating in the distribution and is not an affiliated purchaser of a participating market maker. Furthermore, Rule 10b–6A contains certain eligibility criteria, volume limitations on purchases, and notification and disclosure requirements. See Rule 10b–6A(c)(2) (Level of Bid), (c)(3) (Requirements to Lower the Bid), (c)(4) (Purchase Limitation), (c)(5) (Limitation on Displayed Size), (c)(6) (Identification of a Passive Market Making Bid), (c)(7) (Notification and Reporting to the NASD). *See* 17 CFR 240.10b–6A(c)(2) through (c)(6).

[9] Pursuant to Rule 98 and the guidelines promulgated thereunder, the specialist organization and affiliated entities must be operated as separate and distinct organizations, and ''information barriers'' must be established that place substantial limits on access to, and communications of, trading information, including positions and strategies, between the two organizations. Rule 98 exemptive relief is conditioned on the organizations receiving prior written approval from the NYSE, which conducts an annual review of each firm to ensure that all conditions for the exemption are being met.

specialist was registered during distribution, provided that it has obtained an Exchange exemption from Rule 460.10 pursuant to Rule 98 and a Commission exemption from Rule 10b–6 or Rule 10b–13.[10] Under the new provision, an associated specialist would still be required to ''give up the book'' in the subject security to another specialist member organization satisfactory to the Exchange, in situations where the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13, until the book may be reacquired by the associated specialist in accordance with Rule 10b–6 or Rule 10b–13.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the rule change is consistent with the requirements of the Act in that the proposal will allow the NYSE rules to reflect accurately the current state of the law. In response to the NYSE's Petition for Relief, the Division has granted exemptions from Rules 10b–6 and 10b–13 to permit NYSE specialists (''Affiliated Specialists'') affiliated with a NYSE member firm (''Affiliated Broker-Dealer'') to remain in the market and to continue their normal specialist activities during the period when the Affiliated Broker-Dealer is engaged in a distribution of a specialty security or is acting as a dealer manager in a tender or exchange offer for a specialty security.[12]

In providing the requested relief to the NYSE specialists, the Division has placed certain terms and conditions on the exemptions as well as limitations on their scope. As conditions to the exemptions, the Affiliated Specialist and the Affiliated Broker-Dealer must comply with the terms of, and the enumerated obligations imposed by, the exemptive letter. Moreover, the NYSE also has certain responsibilities to conduct surveillance of Affiliated Specialists and Affiliated Broker-Dealers for compliance with the conditions of the exemptions, to guard against manipulative conduct, and to provide an analysis of the operation of the exemptions to the Division.

The amendment to Rule 460.20 would require the NYSE specialists to ''give up the book'' during a distribution in which an approved person participates if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13. The Commission, therefore, believes that Exchange Rule 460.20 is consistent with Rules 10b–6 and 10b–13 and any exemption as granted by the Division. The proposed rule change would also reaffirm, through an exchange rule, the obligations under Rules 10b–6 and 10b–13 of an associated specialist to ''give up the book'' where such specialist does not have an exemption from such rules.

The Commission notes that the exemptions as provided by the Division are subject to modification or revocation at any time the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Act. Therefore, it is the responsibility of the associated specialist and the approved person to become aware of any changes in the exemptions and to determine whether an exemption continues to apply to their activities. Moreover, the Exchange should notify its members of any modifications or revocation of the exemptions granted by the Division.

Moreover, the Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for comment and no comments were received.[13] Amendment No. 1 merely codifies the intention of, and what necessarily must be implied from, the proposed rule change: that associated specialists do not have to give up the book if the associated specialists and approved persons have an exemption from Rule 10b–6 or Rule 10b–13. Amendment No. 1 does not alter the substance of the NYSE's original proposal as previously published. Moreover, the proposed rule change, as amended, merely makes Exchange Rule 460.20 compatible with the exemptions granted by the Division; the rule change does not independently create any rights or obligations for NYSE specialists. Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the amended proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–21 and should be submitted by August 28, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–95–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19386 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[10] Absent an exemption from or exception to Rule 10b–6, Exchange specialists that are affiliated with a person participating in a distribution of securities would be precluded from bidding for or purchasing such securities or any related securities.

[11] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[12] *See Letter regarding Application of Rules 10b–6 and 10b–13 to New York Stock Exchange Specialists* (File No. TP94–293) (July 31, 1995). The exemptions provided in this letter will expire in two years from the effective date of the exemptions unless otherwise extended. This sunset provision is consistent with the NYSE's proposed rule change, which would require an associated specialist of an approved person acting as an underwriter in a distribution to ''give up the book'' if the associated specialist and approved person do not have an exemption from Rule 10b–6 or Rule 10b–13.

[13] *See* Securities Exchange Act Release No. 35929 (June 30, 1995), 60 FR 35759 (July 11, 1995).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[File No. 1–11922]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (MedicalControl, Inc., Common Stock, $0.01 Par Value, Warrants Expiring May 13, 1996)

August 1, 1995.

MedicalControl, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Pacific Stock Exchange, Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the primary reason for this action relates to the lack of trading volume on the PSE. The Board of Directors is unaware of any benefit based on its evaluation of the listing. The Company also is listed on the Nasdaq National Market System where the stock primarily trades.

Any interested person may, on or before August 22, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19387 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–12992]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (NuMed Home Health Care, Inc., Common Stock, $0.001 Par Value, Redeemable Common Stock Purchase Warrants Expiring February 7, 2000)

August 1, 1995.

NuMed Home Health Care, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Securities are currently listed on the BSE under the symbols ''NUH'' and ''NUHW'' respectively. The Securities also currently trade on the Nasdaq Small Cap under the Symbols ''NUMD'' and ''NUMDW''. It is the Company's intention to continue to have the Securities listed on the Nasdaq. The Company is seeking to delist from the BSE because there has been no trading activity in the Securities on the BSE since the Company's original listing in February 1995. The Company does not wish to continue any expenses associated with the BSE listing. All trading in the Securities occurs on the Nasdaq.

Any interested person may, on or before August 22, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–19388 Filed 8–4–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2783]

Missouri; Declaration of Disaster Loan Area (Amendment #3)

The above-numbered Declaration is hereby amended, effective July 21, 1995, to include Mercer County in the State of Missouri as a disaster area due to damages caused by severe storms, hail, tornadoes, and flooding beginning on May 13, 1995 and continuing through June 23, 1995.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Decatur and Wayne in the State of Iowa may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 11, 1995, and for loans for economic injury the deadline is March 12, 1996.

The economic injury number for Missouri is 853400 and for Iowa the number is 853900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1995.

James W. Hammersley,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–19319 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2801]

New York; Declaration of Disaster Loan Area

Jefferson County and the contiguous counties of Lewis, Oswego, and St. Lawrence in the State of New York constitute a disaster area as a result of damages caused by severe thunderstorms which occurred on July 15, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 28, 1995, and for economic injury until the close of business on April 29, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, New York 14303, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125

	Percent
For economics injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 280111 and for economic injury the number is 860200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1995.

Philip Lader,

Administration.

[FR Doc. 95–19320 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2793]

Virginia; Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, in accordance with notices from the Federal Emergency Management Agency dated July 10 and 12, 1995, to include the City of Bedford and Amherst, Bedford, and Franklin Counties in the Commonwealth of Virginia as a disaster area due to damages caused by severe storms and flooding beginning on June 22, 1995 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Floyd and Patrick in the Commonwealth of Virginia may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is August 29, 1995, and for loans for economic injury the deadline is April 3, 1996.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 27, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–19321 Filed 8–4–95; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling SSR 95–3p.; Title II: Transactions Involving Noncash Transfers for Agricultural Labor

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–3p. This Policy Interpretation Ruling explains when certain transactions involving noncash transfers for agricultural labor may be considered wages under Section 209(a) of the Social Security Act. The Internal Revenue Service (IRS) issued guidelines for evaluating whether such transactions are, in economic reality, payments in cash and therefore wages for purposes of the Federal Insurance Contributions Act tax. Since the Social Security Administration (SSA) does not have such guidelines, these transactions have not been treated by SSA as wage payments for Social Security coverage and annual earnings test purposes. The purpose of this Ruling is to achieve consistent treatment between SSA and the IRS of transactions involving noncash transfers for agricultural labor.

EFFECTIVE DATE: August 7,1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners)

Dated: July 27,1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling—Title II: Transactions Involving Noncash Transfers for Agricultural Labor

Purpose: This Ruling explains when certain transactions involving noncash transfers for agricultural labor may be considered wages under section 209(a) of the Social Security Act. The purpose of this Ruling is to provide that the treatment afforded by the Social Security Administration (SSA) of such transactions will be the same as the treatment afforded by the Internal Revenue Service (IRS).

Citation (Authority): Sections 209(a), 210(f), and 210(j)(2) of the Social Security Act (the Act); Regulations No. 4, sections 404.1005, 404.1007, 404.1010, 404.1016, 404.1017, 404.1041(e), 404.1055, 404.1056, 404.1068(c), and 404.1074.

Background: Section 209(a)(7)(A) of the Act and section 3121(a)(8)(A) of the Internal Revenue Code (IRC) provide that, for purposes of Social Security coverage and Federal Insurance Contributions Act (FICA) taxation, respectively, the term ''wages'' does not include ''remuneration paid in any medium other than cash for agricultural labor'' (as defined in section 210(f) of the Act and section 3121(g) of the IRC). Any medium other than cash (generally referred to as ''in-kind'' payments) includes, for example, lodging, food, clothing, or agricultural commodities. Some farmers have attempted to use commodity payments as remuneration for agricultural services to avoid paying FICA tax. This practice can prevent farm workers from accumulating the quarters of coverage needed to qualify for Social Security benefits. However, the IRS clarified in Revenue Ruling 79–207 and in subsequent guidelines that a transfer of an in-kind item which is immediately converted to cash is, in economic reality, a payment in cash not subject to the wage exclusion. The effect of the ruling is that certain transactions involving in-kind transfers for agricultural labor have been considered cash payments and therefore wages subject to tax under FICA. SSA policy has been not to treat such in-kind transfers as wages under the Act when evaluating them for Social Security coverage purposes.

To achieve consistent treatment between SSA and the IRS of transactions involving in-kind transfers for agricultural labor, SSA is adopting

the policy position in IRS Revenue Ruling 79–207.

Policy Interpretation: To determine whether certain transactions involving in-kind transfers for agricultural labor are wages within the meaning of section 209(a) of the Act, and thus creditable as wages for Social Security benefit purposes, SSA will consider the following:

1. Does an employer-employee relationship exist? Only noncash payments to an employee qualify for the section 209(a)(7)(A) exception. In-kind payments received by a self-employed individual engaged in farming are not subject to this exception and may be considered in determining self-employment income which is credited for Social Security coverage purposes. Section 210(j)(2) of the Act defines ''employee'' as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.'' SSA's rules for evaluating whether an individual is a common-law employee are found in 20 CFR 404.1007.

When a farmer's spouse (or child 18 or older) performs agricultural labor for the farmer, the individual may be an employee. Generally, an employer-employee relationship exists when the person for whom the labor is performed has the right to control and direct the person who performs the services. Special coverage rules with respect to farm crew leaders, foreign agricultural workers, and sharefarmers are found in 20 CFR 404.1010, 404.1016, 404.1017, 404.1068(c), and 404.1074.

2. Is the in-kind transfer, in economic reality, equivalent to a payment in cash? Although section 209(a)(7)(A) of the Act excludes from the definition of covered wages remuneration paid in any medium other than cash for agricultural labor, if a bona fide transfer of the noncash medium from the employer to the employee has not occurred and the transaction is, in economic reality, equivalent to a payment in cash, the wage exclusion will not apply.

In determining whether a transaction involving a noncash medium is, in economic reality, a payment in cash, SSA will consider the extent to which the employee exercised dominion and control over the noncash item. Many factors may be relevant including, among other things: (1) Whether the employer has transferred a readily identifiable portion of an item; (2) whether there is documentation of the transfer; (3) the length of time between the employee's receipt and sale of the item; (4) whether the employee negotiates the subsequent sale of the item; (5) whether the risk of gain or loss shifted to the employee; and (6) whether the employee bears the costs incident to ownership of the item, for example, storage, feeding, or maintenance costs.

Example 1: A farm operator agrees to give an employee 30 head of cattle for services performed on the farm. The farm operator sells 100 head of cattle to a commodity purchaser. The commodity purchaser gives the farm operator a check for 70 head of cattle and the employee a check for 30 head of cattle. These facts indicate that the cash proceeds from the sale are wages because the employee did not exercise dominion and control over the cattle.

Example 2: A farm operator pays an employee $50 a month plus 10 head of cattle per month for services performed on the farm. The employee pays the farm operator rent to maintain the cattle on the farm property in an area separate from the farm operator's livestock. The employee assumes the costs of feeding, maintaining, and transferring the cattle to the market for sale. The employee is paid directly by the commodity purchaser for the cattle. These facts indicate that the commodity payments are not wages because the employee exercises dominion and control over the cattle subsequent to receipt and bears the costs incident to ownership of the cattle.

Example 3: An employment agreement provides that a farmer will compensate his wife in cash wages of $100 per month and transfer 100 head of cattle each year. The wife's cattle are raised and maintained with the husband's cattle. Under the employment agreement, the farmer delivers the cattle to a market location agreed upon by the wife and at the market transfers ownership to the wife. The wife's cattle were not distinguishable or readily identifiable from the other cattle taken to market. The wife receives a check directly from the market for the cattle. Since the sale of the cattle occurs almost simultaneously with their delivery to the wife, these facts indicate that the in-kind transfer is, in substance, equivalent to a cash payment and therefore wages for Social Security purposes.

Documentation: Evidence documenting the existence of an employment relationship, the terms of the agreement, and the transfer of commodities should be obtained. There is a presumption that an individual's earnings record as maintained by SSA is correct as posted. SSA determines whether the evidence is sufficient to overcome that presumption of correctness.

Effective Date: This policy is effective upon publication of this Ruling in the **Federal Register**.

Cross-References: Program Operations Manual System, Part 3, Chapter 021, Subchapter 01; and Chapter 014, Subchapter 02, Section RS 01402.020.

[FR Doc. 95–19365 Filed 8–4–95; 8:45 am]

BILLING CODE 4190–29–P

[Social Security Ruling SSR 95–4c]

Supplemental Security Income—Termination of Benefits Due to Excess Resources

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 95–4c. This Ruling is based on a decision by the U.S. Court of Appeals for the Third Circuit in *Chalmers* v. *Shalala,* 23 F.3d 752 (3rd Cir. 1994), which upheld the Secretary's decision and found that the claimant's equitable interest in real property was a countable resource as set out in the Social Security regulations. Despite her mental impairment, the Court of Appeals found that the claimant had the power to liquidate her equitable interest and apply the proceeds toward her support. Consequently, because her equitable interest in the real property was valued above the resources limit set by the supplemental security income program, the claimant's benefits were properly terminated.

EFFECTIVE DATE: August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 96.006 Supplemental Security Income)

Dated: July 27, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Sections 1611(a)(3)(B) and 1613 of the Social Security Act (42 U.S.C. 1382(a)(3)(B) and 1382b) Supplemental Security Income—Termination of Benefits Due to Excess Resources

Chalmers v. Shalala, 23 F.3d 752 (3rd Cir. 1994)

20 CFR 416.1201(a)–(c)

The claimant had been receiving supplemental security income (SSI) benefits based on disability because of schizophrenia since April 1978. In September 1980, she jointly inherited property with her siblings and subsequently formed a partnership with them to manage the property, valued above the countable resources limit allowed by the SSI program.

In November 1989, the Secretary of Health and Human Services notified the claimant that her SSI benefits were being terminated because she owned countable resources in excess of the $2,000 limit applicable to an individual.

The claimant requested a hearing and the administrative law judge (ALJ) found that the claimant's interest in the property was not a resource because she was not its sole owner and, therefore, could not convert the property to cash for her own support and maintenance. However, the ALJ held that the claimant's interest in the partnership was a resource because she had the power to dispose of her interest in the partnership and apply the proceeds toward her support. On review, the Appeals Council concluded that the claimant ''has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore, the claimant's share of the land or partnership is countable.''

The claimant filed a civil action challenging the Secretary's termination of benefits. The district court, without reaching the question of whether Chalmers' equitable interest in the property was a resource, held that her interest in the partnership was a resource under the Secretary's regulations because she had the legal right to liquidate it. On appeal, the U.S. Court of Appeals for the Third Circuit, agreeing with the Secretary, held that the regulatory requirement contained in 20 CFR 416.1201(a) that an individual have the ''power'' to liquidate property in order for it to be considered a resource, means the legal authority to do so. Thus, the claimant's alleged mental impairment that purportedly would result in a lack of actual power to make decisions regarding the liquidation of the property she owned was irrelevant to the determination whether that property was her resource. Further, because the claimant could dissolve the partnership and regain her equitable interest in the real property, which could thereafter be liquidated and applied to her support, her interest in the real property was a resource.

Sloviter, Chief Judge

I

This is an appeal from an order of the district court affirming a decision of the Secretary of Health and Human Services to terminate the Supplemental Security Income (SSI) benefits that appellant Fannie Chalmers had been receiving since April, 1978. Because Chalmers is schizophrenic, she has been unable to care for herself and lives with her sister. In September, 1980, Chalmers's father died intestate, and she and her three siblings jointly inherited four houses on contiguous parcels of land in Eden, North Carolina, appraised at $47,000, which were encumbered by a lien in the amount of $23,000.[1] They also inherited a 7.5 acre parcel of unimproved land in a different county in North Carolina worth $3,000.

Chalmers's three siblings desire to keep the Eden properties because they wish to retire there ultimately. Chalmers's brief contends that because of her illness it is impossible to ascribe to her any intentions with respect to the property. At the suggestion of their North Carolina counsel, Chalmers and her siblings formed a partnership, C & P Land Company, to manage the properties and pay the mortgage from the rents collected. In order not to trigger the outstanding debt, they did not change the title to the properties which is in the name of Chalmers's father.

Each of the four siblings, including Chalmers, signed an agreement conveying his or her one-quarter equitable interest in the properties to the partnership in return for a legal interest in the partnership. The agreement provides that all four partners will share equally in the profits and losses and, significant for the issue on appeal, that the partnership may be dissolved at any time by any of the partners, which shall result in the liquidation of the partnership.

C & P Land Company depreciates the rental properties for income tax purposes, and, pursuant to the partnership agreement, these deductions are allocated to each partner. A 1981 letter from the attorney to Chalmers's sister states: ''I doubt * * * that you will receive much as income from the property. The major advantage to you will be the depreciation for tax purposes. The property is a tax shelter for you.''

[1] The Administrative Law Judge and the Appeals Council refer to the value as $49,000. The difference is not significant for our purpose. The estate also contained personal property but it was ''of nominal value.''

II

Subchapter [2] XVI of the Social Security Act provides for payments to disabled persons of limited income and resources, subject to certain eligibility requirements. *Cannuni* v. *Schweiker,* 740 F.2d 260, 263 (3d Cir.1984) (citing 42 U.S.C. § 1382b(a)). The limit applicable to Chalmers's resources is $2,000. 42 U.S.C. § 1382(a)(3)(B) (1988). The statute does not define ''resources,'' but the Secretary has promulgated regulations providing that:

(a) Resources; defined. For purposes of this subpart L, resources means cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance.

(1) If the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource. If a property right cannot be liquidated, the property will not be considered a resource of the individual (or spouse).

* * * * *

(b) Liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days * * *

(c) Nonliquid resources. (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days. * * * Examples of resources that are ordinarily nonliquid are * * * buildings and land.

20 C.F.R. 416.1201(a)–(c) (1993) (emphasis added).

Chalmers was notified by the Secretary in November 1989 that her SSI benefits were being terminated because she owned resources in excess of the limit of $2,000, i.e, the property she had inherited from her father. Chalmers requested a hearing and the matter came before an administrative law judge (ALJ). The ALJ found that Chalmers's interest in the property was not a resource because she was not its sole owner and therefore could not convert the property to cash for her own support and maintenance. However, the ALJ held that Chalmers's interest in the C & P partnership was a resource because she had the power to dispose of her interest in the partnership. On review, the Appeals Council concluded that Chalmers ''has not shown that the power to partition is forfeited based on the mental capacity to exercise the right to partition. Therefore the claimant's share of the land or partnership is countable.''

[2] The court is referring to Title XVI of the Social Security Act. [Ed. Note.]

Chalmers filed an action in district court for review of the Secretary's decision. The court held that Chalmers's interest in the C & P partnership was a resource under the regulations because she had the legal right to liquidate it. The district court did not reach the question whether Chalmer's equitable interest in the property was a resource, although it said that ''it would appear that [it], too, is a 'nonliquid resource' under the Secretary's regulation.'' *Chalmers* v. *Sullivan,* 818 F.Supp. 98, 102–103 (D.N.J.1993). Chalmers appeals.

We accord considerable deference to the Secretary's interpretation of the SSI statute and its regulations. *Beatty* v. *Schweiker,* 678 F.2d 359, 360 (3d Cir.1982). ''Indeed, we will uphold the Secretary's interpretation of the regulations 'unless it is plainly erroneous or inconsistent with the regulation[s].' '' Id. (quoting *Bowles* v. *Seminole Rock & Sand Co.,* 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945)).

Chalmers concedes on appeal, as indeed she must under the facts, that: ''She had the right to terminate the partnership, C & P Land Company. She could have legally sold or otherwise conveyed her ¼ interest in the real estate, subject to the rights of her siblings, as cotenants. She even had the legal right to bring an action to partition the property as suggested by the Social Security Appeals Council.''

She argues, however, that although she has the ''right'' to liquidate her interests, her disability renders her without the requisite ''power'' to do so. This argument misconstrues the meaning of the word ''power'' as used in the regulations. It means not only ''a mental or physical ability or aptitude,'' as Chalmers argues, but also ''legal authority,'' as the Secretary implicitly uses the word. See Webster's Third New International Dictionary 1778–79 (1964). We do not believe that the word ''power'' was used in the regulations as limited to ''mental or physical ability.'' Moreover, it is likely that many disabled individuals receiving SSI benefits lack the mental or physical ability to manage their own resources, and such an interpretation would render the provision meaningless. Thus, we cannot say that the Secretary's interpretation of ''power'' as ''legal authority'' is plainly erroneous, for it is indeed the more sensible construction.

Chalmers argues further that we should interpret the regulatory language ''right, authority or power'' in the conjunctive instead of the disjunctive. We see no basis to construe the disjunctive ''or'' in any way other than its plain meaning, see *Herron* v. *Heckler,* 576 F.Supp. 218, 222–23 n.–2 (N.D.Cal.1983) (declining to construe ''and'' as ''or'' in other SSI regulations), which is the construction adopted by HHS. The cases relied upon by appellant's counsel are simply inapposite.[3]

We turn next to the question whether Chalmers's interest in the property is a resource for SSI purposes. The principal definition section of the regulation explicitly states that ''resources means * * * real * * * property.'' 20 C.F.R. § 416.1201(a) (1993). Similarly, 20 C.F.R. 416.1201(a)(1) also refers to property, providing that ''[i]f the individual has the right, authority or power to liquidate the property, or his share of the property,'' it is defined as a resource. Chalmers concedes that she can sell ''her ¼ interest in the real estate'' and can also ''bring an action to partition the property.'' We therefore conclude that the fact that Chalmers had the legal right to liquidate her interest in the inherited property qualifies it as a resource under the Secretary's regulations.[4]

In essence Chalmers argues that it is not ''sensible'' or ''advantageous'' to partition the property because lawyer's fees and costs will consume its net worth. Although that is not an unreasonable position, it is not one that finds support in the regulation. Thus, we are not free to read into the statute or the regulation a requirement that is not there.

Our conclusion is buttressed by legislative history regarding the definition of resources. The House Report to the Social Security Act provides that:

> Property not used in the operations of a trade or business and which does not provide a reasonable return should clearly be included as resources. Assets such as buildings or land not used as the individual's abode (which is excluded as described above) which are not readily convertible to cash must be disposed of within a time limit prescribed by the Secretary of Health, Education, and Welfare.

H.R.Rep. No. 231, 92nd Cong., 2d Sess., reprinted in 1972 U.S.C.C.A.N. 4989, 5140. We find this history dispositive. The property at issue is not used in the operations of a trade or business or as the individual's abode, and it does not provide a reasonable return. On the contrary, its ''major advantage'' is ''as a tax shelter.'' Congress clearly intended that such ''buildings and land'' ''must be disposed of'' ''if they were not readily convertible to cash.''

Although we are sympathetic to Chalmers's disability, the record does not establish unequivocally that she cannot effectuate her legal rights. An affidavit filed by her psychiatrist states that it would be ''impossible for Ms. Chalmers to retain one attorney and participate in and discuss legal matters,'' but it is also a matter of record that Chalmers has been represented by an attorney at each stage of these proceedings and that she signed the partnership agreement to form the C & P Land Company.

Finally, Chalmers's reliance on *Cannuni* v. *Schweiker,* 740 F.2d at 264 (3d Cir.1984), is misplaced. In *Cannuni,* we were asked whether a multiple-party bank account and certificates of deposit were resources sufficient to disqualify a disabled son for SSI benefits. Because we determined that the claimant did not have the legal right to withdraw the funds for his own support, we held that the property could not be considered resources for SSI purposes. Unlike the claimant in *Cannuni,* Chalmers has the right to liquidate her interest in order to apply the proceeds toward her support. While we recognize the difficulty she may have in exercising her rights, we cannot accept her argument that she need not do so because ''there are many situations in which the exercise of all of one's legal rights is not the most sensible and advantageous course.'' For all of the foregoing reasons, the order of the district court will be affirmed.

[FR Doc. 95–19366 Filed 8–4–95; 8:45 am]
BILLING CODE 4190–29–P

[3] For example, in *De Sylva* v. *Ballentine,* 351 U.S. 570, 573–74, 76 S.Ct. 974, 976, 100 L.Ed. 1415 (1956), the Court read the ''or'' in the conjunctive, but the statute in question, the 1909 Copyright Act, was ''hardly unambiguous'' and the legislative history of the statute suggested that the use of ''or'' may have been a matter of ''careless usage.''

[4] Also, the definition of nonliquid resources explicitly refers to ''property'' and, as the district court noted, offers ''buildings and land'' as examples of such resources. 20 C.F.R. § 416.1201(c) (1993). See *Chalmers,* 818 F.Supp. at 102.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–95–012]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Advisory Committee will meet to discuss various navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 9 a.m. to approximately 11 a.m. on Tuesday, September 12, 1995.

ADDRESSES: The meeting will be held in the 11th floor conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Presentation of the minutes from the June 13, 1995 full Committee meeting.

(2) Subcommittee Reports.

(3) Industrial Lock Replacement.

(4) Towboat Horsepower/Tonnage ratios.

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19350 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–95–013]

Lower Mississippi River Waterway Safety Advisory Committee Vessel Traffic Service Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee's Vessel Traffic Service Subcommittee will meet to discuss navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 11 a.m. on Wednesday, August 23, 1995.

ADDRESSES: The meeting will be held at the Crescent Pilots' Belle Chasse office, located at 8712 Highway 23, Belle Chasse, Louisiana 70037.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Introduction of new members.

(2) Discussion on the plans for a Vessel Traffic Service on the Lower Mississippi River.

(3) Presentation of any additional new items for consideration of the Committee.

Dated: June 30, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 95–19351 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

[CGD08–95–014]

Lower Mississippi River Waterway Safety Advisory Committee Gaming Vessel Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee's Gaming Vessel Subcommittee will meet to discuss navigation safety matters affecting the Lower Mississippi River area. The meeting will be open to the public.

DATES: The meeting will be held from 10 a.m. to approximately 11 a.m. on Thursday, September 7, 1995.

ADDRESSES: The meeting will be held in room 1830 of the World Trade Center, 2 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone (504) 589–4686.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The meeting is open to the public. Members of the public may present written or oral statements at the meeting. The agenda for the meeting consists of the following items:

(1) Introduction of new members.

(2) Discussion on the present and future operation of Gaming Vessels on the Lower Mississippi River.

(3) Presentation of any additional new items for consideration of the Committee.

Dated: June 22, 1995.

R.C. North,

Rear Admiral, U.S. Coast Guard, Commander, Eight Coast Guard District.

[FR Doc. 95–19352 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Change 1, Advisory Circular (AC) 25–7, Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of change to advisory circular.

SUMMARY: This notice announces the issuance of Change 1 to Advisory Circular (AC) 25–7, Flight Test Guide for Certification of Transport Category Airplanes. This change to the basic advisory circular provides updated guidance to ensure consistent application of certain airworthiness requirements recently adopted by Amendment 25–84.

DATES: Change 1 to AC 25–7 was issued on June 6, 1995, by the Acting Manager of the Transport Airplane Directorate, Aircraft Certification Service, in Renton, Washington.

HOW TO OBTAIN COPIES: A copy of Change 1 may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

Issued in Renton, Washington, on July 26, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–19422 Filed 8–4–95; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 151

Monday, August 7, 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).

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409)

[5 U.S.C. Section 552b]

TIME AND DATE: 9:00 a.m., Thursday, August 17, 1995.

PLACE: 5550 Friendship Boulevard, Suite 420, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Proposal to continue the delegation of decision-making authority to Regional Commissioners along the present geographical lines following the closure on April 1, 1996, of the North Central Regional Office, and the centralization of all Commissioners and remaining staff in the Commission's Chevy Chase, Maryland, headquarters office.
2. Proposal to amend 28 C.F.R. § 2.23 to substitute the title ''Administrative Hearing Examiner'' for ''Regional Administrator.''
3. Proposal to continue the jurisdiction of the Regional Commissioner for the Eastern Region over revocation hearings held at the Federal Transfer Center, Oklahoma City, Oklahoma, if that Commissioner originally issued the warrant.
4. Proposal to amend 28 C.F.R. § 2.40 to reflect the Commission's authority at 18 U.S.C. § 4209 to waive the ten-day comment period when emergencies require an immediate change to parole conditions.
5. Proposal to amend 28 C.F.R. § 2.1, § 2.14, and § 2.29 and the Procedures Manual to allow conversion of presumptive to effective dates up to nine months prior to release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5952.

Dated: August 1, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–19561 Filed 8–3–95; 3:52 pm]

BILLING CODE 4410–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on July 31, 1995, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for September 11, 1995, in Washington, D.C. The members will consider the acquisition of leased postal facilities.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dvhrkopp, Fineman, Mackie, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate a proposed procurement action.

The Board further determined that the public interest does not require that the Board's discussion of these matters be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code; and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 95–19556 Filed 8–3–95; 3:41 pm]

BILLING CODE 7710–12–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, August 1, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate activities.

Application of Trenton Savings Bank FSB, Lawrenceville, New Jersey, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

Recommendation regarding an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 2, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–19498 Filed 8–3–95; 11:35 am]

BILLING CODE 6714–01–M

Corrections

Federal Register

Vol. 60, No. 151

Monday, August 7, 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.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003-5070-02; I.D. 072695A]

Pacific Halibut Fisheries; Area 2A Non-treaty Commercial Fishery Reopening

Correction

Final rule document 95-18850 was inadvertently published in the Notices section of the issue of Tuesday, August 1, 1995, beginning on page 39153. It should have appeared in the Rules section.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[GEN Docket No. 90–56; FCC 95–267]

Mobile-Satellite Service and Aeronautical Telementry

Correction

In rule document 95–17509 beginning on page 37828 in the issue of Monday, July 24, 1995, make the following correction:

§ 87.187 [Corrected]

On page 37829, in the second column, in § 87.187(p), in the first line, ''1435.1525'' should read ''1435–1525''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35985; File No. SR–GSCC–95–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying GSCC's Fee Structure to Reduce the Clearance Fee, to Implement a New Discount Policy, and to Clarify the Fee Structure

July 18, 1995.

Correction

In notice document 95–18096 beginning on page 37911 in the issue of Monday, July 24, 1995, in the second column, the date was omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 150

[CGD 95-900]
RIN 2115-AF07

Bulk Hazardous Materials; Correction

Correction

In rule document 95–18764 beginning on page 39267 in the issue of Wednesday, August 2, 1995, make the following corrections:

1. On page 39267, in the second column, in paragraph 6., in the correction to paragraph s., in the second line, ''Ethylene glycol'' should read ''Diethylene glycol''.

2. On the same page, in the third column:

a. In the seventh line from the top, ''GILT'' should read ''GLT''.

b. In paragraph 11., in the third line, ''DAN'' should read ''DAH''; and in the seventh line, ''LEO/'' should read ''VEO/''.

c. In paragraph 14., in the fourth entry, the first line should read ''N-(2-Methoxy-1-methyl ethyl)-2-ethyl-6-''.

d. In paragraph 14., in the sixth entry, in the first line, ''aide'' should read ''fide''; and in the third line, ''polysulfide'' was misspelled.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Avaition Administration

14 CFR Part 71

[Airspace Docket No. 95-ASW-01]

Proposed Establishment of Class E Airspace; Seymour, TX

Correction

In proposed rule document 95–15722 beginning on page 33162 in the issue of Tuesday, June 27, 1995, make the following correction:

§ 71.1 [Corrected]

On page 33163, in the first column, in the amendment to § 71.1, before the last line of stars insert ''That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Seymour Municipal Airport.''.

BILLING CODE 1505–01–D

federal register

Monday
August 7, 1995

Part II

Environmental Protection Agency

40 CFR Parts 122 and 124

Storm Water Discharges; Amendment to Requirements for National Pollutant Discharge Elimination System Permits; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 124

[FRL–5271–7]

Amendment to Requirements for National Pollutant Discharge Elimination System (NPDES) Permits for Storm Water Discharges Under Section 402(p)(6) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal of direct final rule.

SUMMARY: Today, EPA is withdrawing the storm water phase II direct final rule published on April 7, 1995 (60 FR 17950) and promulgating a final rule in its place based on an identical proposal published that same day (60 FR 17958). By today's action, EPA is promulgating changes to the National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations under the Clean Water Act (CWA) for phase II dischargers. Phase II dischargers generally include all point source discharges of storm water from commercial, retail and institutional facilities and from municipal separate storm sewer systems serving populations of less than 100,000.

Today's rule establishes a sequential application process in two tiers for all phase II storm water discharges. The first tier provides the NPDES permitting authority flexibility to require permits for those phase II dischargers that are determined to be contributing to a water quality impairment or are a significant contributor of pollutants to waters of the United States. (''Permitting authority'' refers to EPA or States and Indian Tribes with approved NPDES programs.) EPA expects this group to be small because most of these types of dischargers have already been included under phase I of the storm water program. The second tier includes all other phase II dischargers. This larger group will be required to apply for permits by the end of six years, but only if the phase II regulatory program in place at that time requires permits. As discussed in more detail below, EPA is open to, and committed to, exploring a number of non-permit control strategies for the phase II program that will allow efficient and effective targeting of real environmental problems. As part of this commitment, EPA has initiated a process to include stakeholders in the development of a supplemental phase II rule under the Federal Advisory Committee Act (FACA). This rule will be finalized by March 1, 1999 and will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities prior to the end of the six-year application period defined by today's rule.

DATES: The direct final rule published on April 7, 1995 at 60 FR 17950 and corrected on April 18, 1995 at 60 FR 19464 is withdrawn and this final rule is effective on August 7, 1995. In accordance with 40 CFR 23.2, EPA is explicitly providing that this rule shall be considered final for purposes of judicial review at 1 p.m. (Eastern time) on August 7, 1995.

ADDRESSES: The docket for this rulemaking is available for public inspection at EPA's Water Docket, Room L–102, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment. Please indicate that the docket to be accessed is for the April 7, 1995 **Federal Register** notice on the storm water phase II regulations. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Nancy Cunningham, Office of Wastewater Management, Permits Division (4203), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–9535.

SUPPLEMENTARY INFORMATION:

I. Overview of Today's Action

Today, EPA is promulgating the phase II storm water application regulations as proposed on April 7, 1995 (60 FR 17958). EPA also is withdrawing the direct final rule published on that same date (60 FR 17950); corrected at 60 FR 19464, April 18, 1995. The direct final and proposed rules contained identical requirements. By today's rule, EPA promulgates changes to the NPDES storm water permit application regulations under the CWA to establish a common sense approach for all phase II storm water dischargers. Phase II storm water dischargers include those storm water discharges not addressed under phase I of the storm water program.[1]. Generally, phase II dischargers are point source discharges of storm water from commercial, retail, light industrial and institutional facilities, construction activities under five acres, and from municipal separate storm sewer systems serving populations of less than 100,000.

Today's rulemaking will promote the public interest by relieving most phase II dischargers of the immediate requirement to apply for permits. Consequently, this rule relieves most phase II dischargers from citizen suit liability for failure to have an NPDES permit over the next six years. If a phase II discharger complies with the application deadlines established by today's rule, the facility will not be subject to enforcement action for discharge without a permit or for failure to submit a permit application.

Under today's rule, application deadlines are in two tiers. The first tier allows the permitting authority to focus current efforts on those facilities that will produce the greatest environmental benefit. The first tier is for those phase II dischargers that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants to waters of the U.S. Those dischargers that have been so designated are required to obtain a permit and must submit permit applications to the permitting authority within 180 days of being notified that such an application is required. The permitting authority has the flexibility to extend this deadline. Under the second tier, all remaining phase II facilities must apply for permits by August 7, 2001, but only if the phase II regulatory program in place at that time requires permits. EPA is actively exploring alternative control strategies with broad stakeholder involvement. EPA is also establishing application requirements for phase II dischargers, as well as making other conforming changes to other portions of the NPDES regulations in today's rule.

EPA is subject to a court order to propose supplemental rules for phase II sources by September 1, 1997, and finalize them by March 1, 1999. *Natural Resources Defense Council, Inc.* v. *Browner,* Civ. No. 95–634 PLF (D.D.C., April 6, 1995). However, if the CWA is amended prior to these dates to address some of these storm water issues, EPA will, of course, move to expeditiously implement the statutory changes.

II. Background

EPA provided an extensive discussion of the statutory and regulatory background of the storm water program in the direct final rule published in the April 7, 1995, **Federal Register** notice (60 FR 17950). For the sake of brevity, EPA refers the reader to that notice and

[1] Phase I dischargers include: dischargers issued a permit before February 4, 1987; discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 100,000 or more; and discharges that the permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants to the waters of the United States.

only briefly repeats the background necessary to explain the need for today's final rule.

As explained in CWA section 101, Congress enacted the CWA ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' through reduction and eventual elimination of the discharge of pollutants into those waters. CWA section 301 prohibits the discharge of pollutants from a point source except in compliance with certain other sections of the Act. One of those sections, section 402, established the National Pollutant Discharge Elimination System (NPDES), the permitting program for control of point source discharges including storm water.

In the 1987 amendments to the CWA, Congress enacted section 402(p). Section 402(p)(1) relieved certain storm water dischargers (commonly referred to as phase II dischargers) from the requirement to obtain a permit until October 1, 1992. Section 402(p)(6) provided that EPA was to publish regulations by October 1, 1992. Congress later extended the date for the permitting moratorium until October 1, 1994, and the date for publication of phase II regulations until October 1, 1993. See Water Resources Development Act of 1992, Public Law No. 102–580, section 364, 106 Stat. 4797, 4862 (1992).

Though the relief from the permit requirement lapsed on October 1, 1994, EPA had not published phase II storm water regulations. On October 18, 1994, EPA issued guidance explaining that regulations had not yet been promulgated for the phase II storm water program, and that the Agency was unable to waive the statutory prohibition against unpermitted discharges of pollutants to waters of the United States in the absence of such regulations. EPA is not attempting to extend the CWA deadlines in today's rule, but rather is establishing the phase II storm water program under section 402(p)(6). (See Response to Comment section below for further discussion of this issue.)

III. Regulation Changes

In today's rule, EPA is designating under section 402(p)(6) all phase II sources as being part of the phase II program. EPA is establishing permit application deadlines for these dischargers in two tiers in today's rule. To obtain real environmental results early, the first tier applies to those phase II dischargers that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants. Those dischargers that have been so designated by the permitting authority are required to obtain a permit and must submit a permit application within 180 days of being notified that such an application is required. The permitting authority has the flexibility to extend this deadline. Under the second tier, all other phase II facilities must apply for permits by August 7, 2001, but only if the phase II regulatory program in place at that time requires permits.

EPA also is establishing application requirements for phase II dischargers, as well as making other conforming changes to other portions of its NPDES regulations in today's rule. For example, EPA is providing flexibility to the permitting authority to modify the specific application requirements for phase II dischargers. Again EPA believes this is a common sense approach to alleviate unnecessary burden on phase II dischargers. The specifics of the application requirements and other conforming changes are explained in the April 7, 1995, notice published at 60 FR 17950. EPA has not changed the regulatory text in today's final rule from that notice.

IV. Responses to Public Comment

A comprehensive ''response to comment'' document is available in the administrative record for this rulemaking. Many significant comments, and EPA's responses, are summarized below.

Many commenters disagreed with EPA's interpretation of section 402(p) of the CWA in which EPA determined that section 402(p) sets a statutory deadline for the issuance of permits to phase II storm water dischargers. The commenters argued that 402(p) does not require permits for all discharges of storm water after October 1, 1994, rather it prohibits the need for such permits before this date.

EPA disagrees. CWA section 301(a) states that it is illegal to discharge pollutants to waters of the U.S. except in compliance with Section 402. The current regulations under section 402 establish a permit program for point source discharges. In the 1987 amendments to the CWA, Congress added Section 402(p) to ensure the orderly evolution of the NPDES storm water program. Section 402(p)(1) did not alter the basic underlying prohibition in Section 301(a) as it applied to storm water discharges. Section 402(p)(1) did, however, establish temporary relief from permitting requirements for certain storm water discharges for a specified period of time. Section 402(p)(6) provided EPA with the authority to consider alternative control strategies for the phase II program. Because EPA had not established alternatives under section 402(p)(6), the existing permitting requirements under section 402 applied to phase II dischargers after October 1, 1994.

The legislative history behind 402(p) supports EPA's position that when the date lapsed, phase II sources became subject to the pre-existing statutory requirement to obtain a NPDES permit. The Congressional Record from October 15, 1986 includes the following statements from the House of Representatives:

> The relief afforded by this provision extends only to October 1, 1992. After that date, all municipal separate storm sewers are subject to the requirements of 301 and 402.
>
> After October 1, 1992, the permit requirements of the Clean Water Act are restored for municipal separate storm sewer systems serving a population of fewer than 100,000.
>
> 132 Cong. Rec. H10532 (Oct. 15, 1986)

More recent Congressional actions provide even clearer support for EPA's interpretation of Section 402(p). The original deadline for permits for phase II storm water discharges was October 1, 1992. At the time of this original deadline, the Agency was not ready to issue regulations for implementation of the phase II program. When Congress recognized the severe liability problem this would create for phase II discharges, Congress decided to extend the relief deadline in section 402(p)(1) to October 1, 1994. At the same time, Congress extended the deadline for phase II regulations in section 402(p)(6) to October 1, 1993, to allow EPA more time to develop phase II regulations. If phase II dischargers were not subject to enforcement for violations of section 301(a) until EPA promulgated the phase II regulations, Congress would not have extended sections 402(p)(1) and 402(p)(6) with differing deadlines. If Congress had not intended unregulated phase II sources to be liable for violations of section 301(a) on October 1, 1992, there would have been no need to amend section 402(p)(1) at all.

In related comments, concern was expressed that if such statutory deadlines are valid, EPA does not have the authority to extend statutory permit deadlines. In response, EPA disagrees that this regulation extends statutory deadlines. The statutory deadline lapsed on October 1, 1994. EPA recognized that fact, as well as the consequences thereof, when it issued the October 18, 1994, guidance. The Agency's authority to act under these circumstances arises from the clear text of section 402(p)(6). That section directs EPA to issue regulations which (1) designate storm

water discharges to be regulated to protect water quality and (2) establish a comprehensive program to regulate those sources, including, among other things, expeditious deadlines. In today's rule, EPA relies on section 402(p)(6) to designate all phase II discharges for regulation under a comprehensive program which, for most of those dischargers, does not require permits for 6 years. During the six-year period, EPA will investigate alternative control strategies for the phase II program and will develop supplemental regulations through the FACA process.

Commenters also raised concern regarding the potential for citizen suits. As explained above, today's final rule effectively protects most phase II dischargers from citizen suit liability for failure to have an NPDES permit for up to six years.

A few commenters criticized EPA for the delay in publishing a Report to Congress on storm water discharges not covered under phase I. Further, they did not believe that President Clinton's Clean Water Initiative adequately addressed procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. The Agency believes that the Storm Water Report to Congress, which incorporates the President's Initiative, fulfills the requirements of section 402(p)(5). The Report to Congress cites to data confirming the continuing threat to surface waters caused, in significant part, by unregulated storm water discharges. The Administration's Clean Water Initiative proposed a variety of procedures and methods through which permitting authorities could most flexibly address remaining unregulated discharges of storm water to the extent necessary to mitigate impacts on water quality.

Several commenters questioned whether State and local officials had been consulted in developing the proposed rule as directed by CWA section 402(p)(6). In a September 9, 1992, **Federal Register** notice, EPA invited public comment on reasonable, alternative approaches for the phase II storm water program. Prior to publication of the direct final and proposed rules on April 7, 1995, EPA met with representatives of key municipal organizations to discuss the content of the rule and to gather feedback and input. EPA will continue its outreach efforts by seeking additional public input through FACA subcommittee participation, and other means, in developing supplemental regulations for the phase II program.

Commenters expressed their opinion that the proposed rule should be considered an unfunded mandate as described under the Unfunded Mandate Reform Act of 1995. That is, the commenters believed that the estimated cost of the regulation to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. EPA disagrees. This rulemaking actually reduces the immediate regulatory burden imposed on phase II facilities. EPA believes that the cost to phase II dischargers that are immediately designated under tier 1 will be small due to the extremely few designations that are anticipated. Furthermore, EPA has the authority to modify permit application requirements to require less information and alleviate unnecessary burden on all phase II facilities. Because of these reasons, costs are expected to be well below $100 million for each of the next six years. EPA believes that any costs that might be imposed after the sixth year will still be below $100 million because of the application flexibility, but in any event, those costs will not exceed existing costs (multiplied by the rate of inflation) because of the current statutory requirement that phase II dischargers apply for permits immediately, absent promulgation of today's rule.

The costs of a ''comprehensive'' phase II program after the sixth year will be more fully characterized through additional rulemaking as a result of the FACA process. Under a judicial consent order in *Natural Resources Defense Council, Inc.* v. *EPA*, Civ. No. 95–0634 PLF (D.D.C. April 6, 1995), EPA is required to propose by September 1, 1997, and take final action by March 1, 1999, supplemental rules which clarify the scope of coverage and control mechanisms for the phase II program. The cost to potential dischargers of this action will be identified in the subsequent rulemaking and cannot be accurately predicted in today's final rule. However, EPA does not expect that regulation to cost over $100 million in any one year.

Commenters questioned EPA's justification to designate all phase II dischargers to protect water quality. Many commenters argued that construction sites that disturb less than 5 acres should not be so designated because they do not present significant water quality concerns. In response, EPA relies on the Report to Congress to conclude that unregulated storm water discharges remain a significant threat to the health of surface water quality. While EPA recognizes that individual facilities within the total phase II universe may not represent equal threats, EPA believes that there is sufficient information concerning water quality problems to designate the entire class of phase II dischargers as an interim matter pending further study in the context of the rulemaking described above. EPA will make more specific designations in the context of that rulemaking. In response to comments about small construction sites, EPA notes that these commenters did not present any data to support a conclusion that small construction presents only negligible water quality concerns. As explained in the earlier notice, the FACA subcommittee will explore the appropriate scope of the phase II program.

Today's rule states that permit applications are required within 180 days from receipt of notice for those phase II discharges that the NPDES permitting authority determines are contributing to a water quality impairment or are a significant contributor of pollutants. Commenters requested and suggested further clarification on both of these determinations. EPA purposefully did not provide explicit definitions of these phrases in order to provide flexibility to permitting authorities. Interpretive flexibility is warranted due to climatic and geographic differences across the United States. EPA published guidance for designations under phase I of the storm water program. Such guidance is also applicable for the phase II program designations and is included in the record of this rulemaking.

One commenter took issue with the 180-day deadline for permit applications, particularly for municipal separate storm sewer systems that are designated under tier 1. The commenter felt that such a short period of time would not be sufficient to prepare and submit a municipal application. In response, EPA reminds the commenter that the Director has the authority to grant permission to submit the application at a later date. Some municipalities may not need more time because they may be able to simply reference information already submitted for an adjacent or nearby large or medium municipality under phase I. Additionally, the permitting authority is able to modify the permit application requirements and may require much less information than what was required for phase I dischargers.

Another commenter asked that the period during which a permitting authority may designate a facility be limited to one year. EPA is not limiting the time frame for designations because the permitting authority will need to account for changing conditions and new information that becomes available over time.

Some commenters stated that the ''direct final rule'' is not specifically provided for in the Administrative Procedure Act (APA) nor has EPA demonstrated ''good cause'' to issue a ''direct final rule'' under 5 U.S.C. section 553. This comment is no longer relevant because EPA is withdrawing the direct final rule and instead issuing a final rule that responds to comments received.

One commenter disputed the assertion that urban storm water runoff is a cause of real water quality use impairment in the United States. The commenter also believed that it is inappropriate to base the implementation of phase II requirements on exceedance of water quality standards associated with urban storm water runoff. The commenter believed that water quality criteria were not developed to regulate many of the chemical constituents in urban storm water runoff. EPA disagrees. The fact that urban runoff is a real cause of water quality use impairment is very well supported throughout the literature and is summarized by EPA in the Water Quality Inventory: Reports to Congress prepared on a biannual basis under section 305(b) of the CWA. EPA believes that basing the implementation of phase II requirements on exceedance of water quality standards is appropriate because attainment of water quality standards is one of the explicit goals of the NPDES program. EPA further disagrees that water quality criteria have not been developed for many of the chemical constituents in urban storm water. To the contrary, water quality criteria exist for many such constituents, particularly heavy metals and oil and grease.

A few commenters argued that comments received on the rule are unrepresentative of the groups affected because small cities and commercial establishments were unaware of the direct final and proposed rules. In response, EPA believes that the 60-day comment period was sufficient for small entities to formulate their comments and/or review those drafted by their representative associations. Many of the comments received were from national organizations representing such small cities and businesses, including, National Association of Counties, National Association of Convenience Stores, Society of Independent Gasoline Marketers of America, National Association of Flood and Stormwater Management Agencies, American Petroleum Institute, National Association of Home Builders, and American Car Rental Association.

One commenter disagreed that this rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities because phase II municipalities would have the same burden imposed on phase I municipalities. In response, EPA points out that today's rule provides the Director with discretion to modify the application requirements for phase II dischargers. EPA expects Directors to exercise this discretion to reduce the application burden to both municipalities and individual facilities.

Several commenters questioned the types of permits that will be available to dischargers in 2001. Currently, the permitting authority has the option of individual or general permits. However, EPA does not anticipate that permits will be necessary for all phase II dischargers in 2001. The Agency is committed to promulgate supplemental rules that further consider the scope of the phase II program as well as alternative control mechanisms.

Many commenters made suggestions for the second tier of the phase II regulations such as to allow and encourage phase II municipalities to join phase I municipalities in the same watershed, standardize procedures across the United States, and delegate construction permitting to local governments. Such suggestions will be provided to the FACA subcommittee and will be taken into consideration when developing the subsequent phase II regulations. Commenters also made suggestions for representation on the FACA subcommittee. Such suggestions are being considered in formulating the subcommittee.

Supporting Documentation

A. Executive Order 12866

Under Executive Order 12866, 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. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) Have 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;

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

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

(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.

EPA has determined that this rulemaking significantly reduces the current regulatory burden imposed on phase II facilities. The proposed rule was submitted to OMB for review. OMB cleared the proposed rule with minor changes. Review of this final rule was waived by OMB under the provisions of Executive Order 12866.

B. Executive Order 12875

Under Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'', issued by the President on October 26, 1993, the Agency is required to develop an effective process to allow elected officials and other representatives of State and Tribal governments to provide meaningful and timely input in the development of regulatory proposals.

EPA fully supports this objective and has initiated a consultation process with both States and Tribes which will be continued through the development of additional phase II rules. Specifically, EPA has discussed this action with the representatives of the States, local governments, the Agency's American Indian Environmental Office (AIEO), and parts of the regulated community.

The reaction of the States is positive. The States and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) support the approach that is being taken under existing law; the States and ASIWPCA also support concurrent changes to the law. ASIWPCA has submitted a letter to the Agency dated March 3, 1995, which is included in the record for this matter. EPA has responded to many of ASIWPCA's comments in this preamble.

The reaction of many municipalities is that they prefer a statutory change now to clarify the issue once and for all. Municipalities' representatives (National Association of Counties, National League of Cities, U.S. Conference of Mayors, and the National Association of Flood and Stormwater Management Agencies) have raised many issues to the Agency and have submitted a letter dated February 16, 1995, which is contained in the record for this matter. The municipalities believe that it is inappropriate for EPA to act now when Congress may act on this matter, that the action taken by EPA is not in conformance with the law, and that EPA did not consult with local officials on this matter. EPA has responded to many of the municipalities' concerns in this preamble. EPA did consult with various

representatives of local governments early in the development of this regulation as well as more comprehensively in February 1995.

This rule was also coordinated with EPA's American Indian Environment Office (AIEO). The Office of Water will work through the AIEO to provide for a Tribal representative to participate in the FACA process.

EPA believes that it has developed an effective process to obtain input from State, Tribal and local governments before issuing this rule, as well as receiving comments on the direct final rule and accompanying proposed rulemaking, and has met the consultation requirements for States, federally recognized Tribes and localities under the terms of Executive Order 12875.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget.

EPA's existing information collection request (ICR) entitled ''Application for NPDES Discharge Permit and Sewage Sludge Management Permit'' (OMB Number 2040–0086) contains information that responds to this issue for all storm water discharges, including those facilities designated into the program under this regulation as causing water quality problems. The burden of similar water quality designations, utilized under the phase I storm water program, were accounted for in the ICR and remain applicable to the designations that may be made under this rule. EPA will review and revise the estimates contained in this ICR, as appropriate, in its renewal process.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities, and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

EPA has determined that today's rule would not have a significant impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis therefore is unnecessary. Through today's action EPA is benefiting small entities by (1) adopting a common sense approach to deal with the issue of storm water phase II requirements, (2) providing the ability for the permitting authority to manage for results by providing flexibility to deal with storm water phase II permitting at this time based on water quality violations or significant contribution of pollutants, and (3) clarifying and reducing applicable burdens for those facilities currently subject to phase II requirements. The rule provides additional time for EPA to work with all stakeholders, including small entities, to develop additional phase II regulations under a FACA process. The Agency is committed to issue these supplemental phase II regulations by March 1, 1999; in that rulemaking EPA will reconsider its Regulatory Flexibility Act analysis.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a written statement to accompany proposed rules where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by any rule.

EPA estimates that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million. This rulemaking significantly reduces the immediate regulatory burden imposed on phase II facilities. EPA has determined that an unfunded mandates statement therefore is unnecessary.

Although not required to make a finding under section 206, EPA concludes that this rule is cost-effective and a significant reduction in burden for State and local governments. In a September 9, 1992, **Federal Register** notice, EPA invited public consideration of and comment on reasonable alternative approaches for the phase II storm water program. Today's rule provides for the first step for many of those alternatives by providing for an orderly process for developing supplemental regulations. By establishing regulatory relief until development of those alternative approaches, today's rulemaking itself provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule at this stage, consistent with statutory requirements.

As discussed previously, EPA initiated consultation with representative organizations of small governments under Executive Order 12875. In doing so, EPA provided notice to potentially affected small governments to enable them to provide meaningful and timely input. EPA plans to inform, educate, and advise small governments on compliance with any requirements that may arise in further development of the storm water phase II rules.

F. Procedural Requirements and Effective Date

Today's rule is effective on August 7, 1995. Section 553 of the APA provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date except, as relevant here, (1) for a substantive rule which grants or recognizes an exemption or relieves a restriction or (2) when the agency finds and publishes good cause for foregoing delayed effectiveness. Today's rule relieves phase II dischargers from the immediate requirement to obtain a permit. Additionally, the Agency has determined that good cause exists for making this regulation effective immediately because today's final rule does not differ from the withdrawn direct final rule which would have become effective on August 7, 1995.

List of Subjects

40 CFR Part 122

Enviromental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous waste, Indian lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, parts 122 and 124 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 122—[AMENDED]

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by adding a sentence to the end of paragraph (c)(1) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see 123.25).

* * * * *

(c) *Time to apply.*

(1) * * * New discharges composed entirely of storm water, other than those dischargers identified by § 122.26(a)(1), shall apply for and obtain a permit according to the application requirements in § 122.26(g).

3. Section 122.26(a)(1) is amended as follows:

a. In paragraph (a)(1) the introductory text is amended by revising the date ''October 1, 1992'' to read ''October 1, 1994'';

b. By adding paragraph (a)(9) as set forth below;

c. By revising the title of paragraph (e) as set forth below;

d. In paragraph (e)(1)(ii), by revising the phrase ''permit application requirements are reserved'' to read ''permit application requirements are contained in paragraph (g) of this section''; and

e. By adding paragraph (g) as set forth below.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) * * *

(9) On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§ 122.2 and 122.3.

* * * * *

(e) *Application deadlines under paragraph (a)(1).* * *

* * * * *

(g) *Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.

(1) *Application deadlines.* The operator shall submit an application in accordance with the following deadlines:

(i) A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)); or

(ii) All other dischargers shall apply to the Director no later than August 7, 2001.

(2) *Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (c)(1) of this section.

(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.

(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).

PART 124—[AMENDED]

4. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 3901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

5. Section 124.52(c) is amended by revising the parenthetical statement and the next to the last sentence to read as follows:

§ 124.52 Permits required on a case-by-case basis.

* * * * *

(c) * * * (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)) * * * The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. * * *

[FR Doc. 95–19191 Filed 8–4–95; 8:45 am]

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Federal Register

Monday
August 7, 1995

Part III

Department of Transportation

Coast Guard

46 CFR Part 67

Facsimile Filing of Instruments; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 94–070]

RIN 2115–AE98

Facsimile Filing of Instruments

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations to provide for optional filing of commercial instruments by facsimile, and to establish a filing and recording handling fee for filing instruments by facsimile. The option of filing commercial instruments by facsimile complements the centralization of Coast Guard vessel documentation services. Facsimile filing of commercial instruments will assist the centralized vessel documentation center to deliver timely services to distant vessel documentation customers and is responsive to time sensitive matters. Filing commercial instruments by facsimile will further streamline the vessel documentation process.

EFFECTIVE DATE: This rule is effective on October 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Williams, National Vessel Documentation Center; (800) 799–8362.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, National Vessel Documentation Center and C. G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On March 6, 1995, the Coast Guard published a notice of proposed rulemaking titled ''Facsimile Filing of Instruments'' in the **Federal Register** (60 FR 12188). The Coast Guard received 11 letters commenting on the proposal. No public hearing was requested and none was held.

Background and Purpose

Significant changes to the vessel documentation program were made in 1988 by Pub. L. 100–710 (the ''statute''). Among other things, the statute added chapter 313 to title 46, U.S. Code, to revise, consolidate, and codify into positive law the ship mortgage laws administered by the Department of Transportation. The statute made certain substantive changes to then-existing law to modernize ship mortgages and the filing and recording process.

The legislative history for the statute is contained in House Report No. 100–918. That report noted that one of the primary purposes of chapter 313 of title 46, U.S. Code, is to provide third parties with notice of the existence of mortgages and liens. This rule implements one aspect of the suggestions the report made concerning office automation.

On November 15, 1993, the Coast Guard published a final rule (58 FR 60266) revising 46 CFR Part 67 implementing the substantive changes made by the statute. That rule became effective on January 1, 1994. On June 15, 1995, the Coast Guard published a final rule (60 FR 31602) consolidating all vessel documentation functions in the National Vessel Documentation Center (NVDC) in Martinsburg, WV. That rule became effective on August 1, 1995. In accordance with that final rule, after August 1, 1995, all documents related to vessel documentation functions must be submitted to the NVDC. However, to assist the public in adjusting to the consolidation, all of the previous 14 regional vessel documentation offices will have someone present to receive documents relating to vessel documentation functions on behalf of the NVDC until September 30, 1995. After September 30, 1995, only the office in New Orleans, LA, will have persons attached to receive such documents.

Under subpart O of 46 CFR part 67, instruments to be filed and recorded with the Coast Guard are submitted to the National Vessel Documentation Center. Any instrument submitted for filing and recording must be a completed, executed instrument at the time it is submitted. Upon receipt of the instrument at or on behalf of the NVDC, it is stamped with a date and time received. If the instrument submitted meets the minimal requirements for filing, it is marked ''Filed'' and the stamped date and time received is noted as the date and time filed. If the instrument submitted does not meet the minimal requirements for filing, it is rejected and returned to the submitter. Under the terms of 46 U.S.C. 31321(a)(2), filing the instrument with the Coast Guard is the legally significant act which makes it valid against third parties. If all of the necessary elements for recording the instrument are present when it is filed, it can be promptly recorded. Recording the instrument consists of indexing the filed instrument with a book and page number, which serves as a locator for the document, and placing it in the appropriate ''book'' according to its sequential page number(s). If an instrument is filed but cannot be recorded because of an error or omission, the instrument is deemed ''filed subject to termination'' and a 90-day period is provided for correction. If corrected within the 90-day period, the instrument may then be recorded and will retain the date and time originally filed. If the instrument is not corrected within the 90-day period, the filing is terminated and the instrument is returned. To preserve the notice purpose of the statute, any instrument filed with the Coast Guard, even if the filing is terminated and the instrument not recorded, is indexed on the vessel's General Index or Abstract of Title (form CG–1332). Allowing for the submission of an instrument by facsimile for filing would not change any of the procedural steps provided in the regulations. However, the submission of an instrument by facsimile for filing will start the process earlier and will result in an earlier date and time of filing.

Discussion of Comments and Changes

Many of the comments addressed concerns beyond the scope of the proposed rule. For example, some comments wanted information regarding how to directly access the Coast Guard's vessel documentation data base and what kind of computer hardware and software were needed for that purpose. Other comments expressed concerns about the impact that consolidation of the Coast Guard's vessel documentation field offices would have on services and suggested that certain functions be privatized. These concerns will not be addressed in this rulemaking. Only those comments that pertain to the proposed rule will be addressed in this document.

One comment requested an extension of the comment period. The person submitting the comment represented an organization scheduled to meet late in the comment period to discuss the proposed rule. It is noted that the individual who requested the extension to the comment period did submit a comment, on behalf of the organization represented, within the original

comment period. The Coast Guard has consolidated its vessel documentation function to the NVDC in Martinsburg, WV. In order to better serve its vessel documentation customers, the Coast Guard decided that it would be in the public interest to make facsimile submission of instruments for filing available at the earliest feasible date. Therefore, the comment period was not extended.

Three comments questioned the legal authority of the Coast Guard to accept instruments submitted by facsimile for filing. The Coast Guard anticipated this comment in the early stages of this rulemaking and conducted research into this matter. At issue is language in 46 U.S.C. 31321(b) that to be filed an instrument must ''be signed and acknowledged.'' The comments opined that this language means that only the original of an instrument may be accepted for filing. One of the comments stated that acceptance of a reproduced instrument, whether reproduced by photocopy or facsimile, would constitute an impermissible attempt to amend the statute.

The filing and recording system administered by the Coast Guard is an informational system intended to provide to interested parties public notice regarding the existence of security interests or maritime liens on a vessel. In this regard, it is similar to the notice filing system employed by Article 9 of the Uniform Commercial Code (UCC). Under both Article 9 of the UCC and 46 U.S.C. 31321, the critical element in determining whether the filing will be effective against third parties is the adequacy of the information contained in the instrument filed to alert potential searchers of the records to preexisting security interests. Another purpose of the filing and recording system of 46 U.S.C. 31321 is to establish the priority of a preferred ship mortgage over various other maritime liens enforceable in Federal courts under admiralty jurisdiction. For this purpose, it is important that the instrument filed not only contain adequate information for a notice filing system, but that the instrument also be a valid document.

The requirements of 46 U.S.C. 31321 that to be filed the instrument must contain all of the informational elements necessary for notice and that it be ''signed and acknowledged'', are designed to meet both purposes. The purpose of the signature and acknowledgment on the instrument is to demonstrate that the instrument is genuine, that it is what it purports to be, and that it is a validly executed and completed instrument. Further, the statute requires that the parties ''shall use diligence to ensure that the parts of the instrument * * * for which they are responsible are in substantial compliance with the filing and documentation requirements.'' This placement of the burden of accuracy and completeness on the parties to the instrument was designed to remove the burden from the Coast Guard to carefully check each element of an instrument presented for filing to ensure that it was authentic. Therefore, the scope of the Coast Guard's responsibility regarding the acceptance of an instrument for filing is more of a ministerial function than a quality assurance function.

The primary premise to acceptance of an instrument submitted by facsimile for filing is that it is a completed and executed instrument that has been signed and properly acknowledged, and that has been submitted for filing by use of a reliable medium that accurately reproduces the original instrument. The safeguard to the system is that the filing accomplished by initial facsimile submission is temporary; unless the original is received by the Coast Guard within 10 days of submission by facsimile, the filing is terminated. In addition, a comparison between the original instrument and the duplicate received by facsimile will be made to ensure that the instrument submitted by facsimile was an accurate reproduction of the original. If the original instrument bears any alteration from the duplicate received by facsimile, the filing accomplished by facsimile submission will be terminated. Therefore, the Coast Guard's position is that acceptance of an instrument submitted by facsimile for filing fosters the purposes of the filing and recording system of 46 U.S.C. 31321, and that such acceptance complies with the requirements of the statute.

The comments further noted that language proposed for inclusion in the 1995 Coast Guard Authorization Act (H.R. 1361) renders the rulemaking moot. The Coast Guard disagrees. The proposed language, if enacted, is not self-effecting; implementing regulations would be required. In addition, the proposed language would authorize filing instruments ''electronically.'' Electronic filing is far broader in scope than the submission of instruments by facsimile. The Coast Guard's view of the proposed language is that it would authorize a paperless filing system. This rule permitting the submission of instruments by facsimile for filing purposes does not authorize electronic filing.

Two of the comments requested that the time period for receipt of the original and duplicate of the instrument submitted by facsimile for filing be increased from 10 days to 15 days. The Coast Guard intends the primary use of facsimile submission of instruments for filing to be for those situations where time is of the essence. In such cases, the original and duplicate of the instrument should be mailed in such a manner that prompt receipt by the Coast Guard is ensured. Extending the receipt period could encourage batch processing of routine matters for facsimile submission. The Coast Guard does not want to encourage such use of the facsimile submission option. After the Coast Guard and the public have gained some experience with the facsimile submission option, the Coast Guard will examine whether expansion is warranted. Further, it is noted that the proposed language in the 1995 Coast Guard Authorization Act also requires receipt of the original within 10 days of facsimile submission. Therefore, the period within which the original and duplicate of any instrument submitted by facsimile for filing and the original of any accompanying forms must be received by the NVDC will remain 10 calendar days.

One comment suggested that the original and duplicate of the instrument submitted by facsimile for filing should be received by the NVDC within the 10-day period rather than merely be submitted to the NVDC within the time period. The Coast Guard agrees with the comment and the language in paragraph (b) of § 67.219 has been changed accordingly.

Three comments objected to the paper size limitation of 8½ by 11 inches for the original instrument which may be submitted by facsimile. Over the years, the standard paper size for pleadings and other documents in the Federal Courts has become 8½ by 11 inches. The Coast Guard has followed the lead of the Federal Courts in the vessel documentation program and has reformatted all of its forms, certificates, and other documents to 8½ by 11 inches. This effort has been well received by the courts and attorneys who often submit vessel documentation related documents as exhibits to pleadings. The NVDC has acquired plain paper sheet-by-sheet type facsimile machines. The Coast Guard's experience is that this type of facsimile machine produces a high quality reproduction that is durable and easy to maintain. Although the machines have the capability to receive instruments larger than 8½ by 11 inches the Coast Guard has decided to maintain the 8½

by 11 inch size limitation. This decision is based on the need to ensure that the facsimile transmission reproduces the instrument page-for-page to reduce the risk of error and to facilitate comparison of the instrument submitted by facsimile with the original instrument. Therefore, original instruments on other than 8½-inch by 11-inch paper may not be submitted by facsimile for filing.

Four comments objected to the 10-point type size requirement for instruments submitted by facsimile for filing. The principal complaint was that the application for documentation (CG–1258) is not in 10-point size and yet for a vessel not currently documented, an application must accompany the instrument submitted by facsimile. The 10-point type size limitation applies only to the instrument submitted by facsimile for filing, not additional documents accompanying the instrument. The purpose of the 10-point size requirement is to ensure that instruments submitted by facsimile are easily readable and capable of ready comparison with the original when received. Therefore, the 10-point type size limitation is not changed.

Three comments addressed the contents of the facsimile cover sheet. While the comments agreed with the need for the cover sheet, they suggested that the cover sheet also contain the name of the vessel, either the official number or hull identification number of the vessel, and the name(s) of the vessel owner(s). The Coast Guard agrees with these comments and the change has been made in § 67.219(e).

One comment requested that some sort of confirmation of receipt of the facsimile submission be included. The Coast Guard has decided as a matter of policy that it will provide facsimile confirmation within 24 hours of receipt of an instrument sumbitted for filing by facsimile. No change to the regulation is required by this policy determination.

One comment suggested that the word ''instrument'' in paragraphs (e) through (g) of § 67.219 be changed to the word ''document'' since applications for documentation can be submitted in certain situations. This suggestion appears to be based on the page and type size limitations previously discussed. These requirements are intended to assist in the accurate reproduction and readability of instruments submitted by facsimile for filing. The application form is already on 8½-inch by 11-inch paper, and the type size limitation does not apply. Therefore, the suggestion is not accepted. The language in the rule carefully distinguishes between instruments and other documents which may also be submitted by facsimile.

Two comments expressed concern about the language in paragraph (f)(3) of § 67.219 that the filing of an instrument submitted by facsimile will be terminated if there is ''any variance'' between the instrument submitted by facsimile and the original. The comments expressed concern that a transmission error of the instrument by facsimile could cause the filing to be terminated. The Coast Guard's intent is to discourage the use of the facsimile submission option to submit an instrument that is incomplete or subject to change for the purpose of reserving an early filing date and time. An instrument submitted by facsimile for filing must be a completed, executed, and acknowledged instrument to meet the requirements for filing of 46 U.S.C. 31321. However, the Coast Guard understands the concern over the term ''any variance'' with regard to possible facsimile transmission errors. Therefore, the term has been changed to read ''any alteration'' to preserve the prohibition against any intentional change of the original instrument after submission by facsimile. As explained earlier in this preamble, the Coast Guard will compare the instrument submitted by facsimile to the original instrument and will terminate the filing of an instrument submitted by facsimile if the original bears any alteration. The filing of an instrument submitted by facsimile will not be terminated for errors that are determined by comparison with the original to have been caused by transmission problems. If the filing of an instrument submitted by facsimile is terminated, the person submitting the original instrument would also be liable for the fees associated with submission of the instrument by facsimile.

Three comments addressed the proposed fee associated with submitting an instrument by facsimile for filing. One of the comments opined that the fee was too low to cover the costs to the Coast Guard. The Coast Guard has been charging user fees for vessel documentation services since January 1, 1995, when the revision to Part 67 became effective. The fee proposed for the submission of instruments by facsimile was determined by using established personnel costs and projected equipment costs, and projecting the handling time and costs for each instrument. The Coast Guard realizes that the $2.00 per page fee may not reflect the exact cost of the program. However, the Coast Guard periodically reviews its user fees and the basis for those fees, and will make necessary adjustments as experience requires. The $2.00 per page fee applies only to the instrument(s) submitted by facsimile for filing and does not apply to any additional documents submitted that will not themselves be filed and recorded. Therefore, the $2.00 per page fee does not apply to any application required by paragraph (a), or to the facsimile cover sheet required by paragraph (d).

Two of the comments regarding fees stated that the Coast Guard should provide for payment of fees by credit card and should establish payment accounts for frequent customers. While the Coast Guard does not currently permit payment of vessel documentation user fees by charge or credit card or the use of credit/debit accounts, it is exploring those options. Any change to fee payment procedures would be published in the **Federal Register**.

An amendment to the definition of the NVDC in § 67.3 has been included in this rule. This amendment adds a telephone number for the NVDC.

An amendment to § 67.13 has been included in this rule. That amendment merely changes the address of the location in the Coast Guard where material incorporated by reference in part 67 may be inspected.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that optional filing by facsimile will be used only in a limited number of cases. For example, when additional financing is being negotiated; when an assignment or assumption of an existing mortgage is pending; when financing at favorable rates is time critical; or when a vessel owner desires to meet a specific sailing date and filing an instrument is critical to that date, are situations when filing by facsimile could be advantageous. Nevertheless, submission by facsimile is an optional method of presenting instruments for filing. A party may always use regular mail or personal delivery if desired. Therefore, any additional costs to the

public associated with this regulation would be due to an election to use the optional method.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

As explained earlier in this preamble, this regulation merely adds an optional method of submitting certain forms and instruments to the Coast Guard for filing and recording. Since filing by facsimile is optional, any additional costs borne by any users would be at their election. Current methods of submitting instruments for filing, at no increase in costs, remain available. In addition, it is anticipated that the option of filing by facsimile would be used only in limited situations where time is of the essence. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This regulation merely describes an additional method which may be used as an option to submit vessel documentation related instruments to the Coast Guard for filing and recording.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.lB, it is categorically excluded from further environmental documentation. This regulation has been determined to be categorically excluded because the changes made are administrative and procedural in nature, relate solely to the documentation of vessels, and clearly have no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

§ 67.3 [Amended]

2. In § 67.3, the definition of ''National Vessel Documentation Center'' is amended by adding at the end the words ''Telephone: (800) 799–VDOC (8362)''.

§ 67.13 [Amended]

3. In § 67.13, paragraph (a) is amended by removing the words ''Merchant Vessel Inspection and Documentation Division, 2100 Second Street SW., Washington, DC 20593–0001'' and adding in their place the words ''National Vessel Documentation Center, 2039 Stonewall Jackson Drive, Falling Waters, WV 25419''.

4. Section 67.219 is added to read as follows:

§ 67.219 Optional filing of instruments by facsimile.

(a) Any instrument identified as eligible for filing and recording under § 67.200 may be submitted by facsimile for filing to the National Vessel Documentation Center at (304) 271–2400. If the instrument submitted by facsimile for filing pertains to a vessel that is not a currently documented vessel, a properly completed Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258); or a letter application for deletion from documentation must already be on file with the National Vessel Documentation Center or must be submitted by facsimile with the instrument being submitted by facsimile for filing.

(b) Within 10 days of submission by facsimile for filing, the original and one copy of any instrument submitted by facsimile for filing must be received by the National Vessel Documentation Center. If not already on file, the original of any application required by paragraph (a) of this section must also be received by the National Vessel Documentation Center within 10 days of submission of the instrument by facsimile for filing.

(c) Upon receipt of the original instrument and copy in accordance with paragraph (b) of this section, the instrument may be recorded provided it complies with the requirements of this part.

(d) All instruments submitted by facsimile for filing must be clearly legible, be submitted from 8½-inch by 11-inch paper in not less than 10-point type size, and be accompanied by a cover sheet.

(e) The facsimile cover sheet required by paragraph (d) of this section should indicate:

(1) The name, address, telephone number, and facsimile telephone number of the person submitting the instrument by facsimile;

(2) The number of pages submitted by facsimile; and

(3) The name of the vessel, official number or hull identification number of the vessel, and the name(s) of the owner(s) of the vessel to which the instrument relates.

(f) The filing of any instrument submitted by facsimile is terminated and the instrument will be returned to the submitter if:

(1) The instrument is subject to termination for any cause under § 67.217(a);

(2) The original instrument and copy required to be submitted in accordance with paragraph (b) of this section is not received within the 10-day period; or

(3) There is any alteration between the instrument submitted by facsimile for filing and the original instrument and copy received in accordance with paragraph (b) of this section.

(g) When the filing of an instrument submitted by facsimile is terminated for an alteration in accordance with paragraph (f)(3) of this section, the original instrument and copy received in accordance with paragraph (b) of this section will be deemed to be an original filing under this subpart subject to termination. The procedures for written notification of the termination of the filing and for the disposition of instruments described in paragraphs (b) and (c) of § 67.217 will apply.

5. In § 67.500, paragraph (a) is revised to read as follows:

§ 67.500 Applicability.

(a) This subpart specifies documentation services provided for vessels for which fees are applicable. No documentation service for which a fee is applicable will be performed until the

appropriate fee has been paid. Fees are contained in Table 67.550.

* * * * *

6. Section 67.540 is added to read as follows:

§ 67.540 Facsimile handling fee.

A handling fee is charged for processing an instrument submitted by facsimile for filing in accordance with subpart O of this part.

7. In § 67.550, Table 67.550 is amended by adding ''Facsimile submission handling'' as an entry following the entry ''Notice of claim of lien and related instruments'' under the category ''Filing and recording:'' to read as follows:

§ 67.550 Fee table.

* * * * *

TABLE 67.550.—FEES

Activity	Reference	Fee
* * * * * * *		
Facsimile submission handling	Subpart O	[1] 2.00
* * * * * * *		

[1] Per page.

* * * * *

Dated: July 27, 1995.

J.D. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–19345 Filed 8–4–95; 8:45 am]

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Federal Register

Monday
August 7, 1995

Part IV

The President

Executive Order 12968—Access to Classified Information

Presidential Determination No. 95–32 of July 28, 1995

Presidential Determination No. 95–33 of July 31, 1995

Federal Register
Vol. 60, No. 151
Monday, August 7, 1995

Presidential Documents

Title 3—

The President

Executive Order 12968 of August 2, 1995

Access to Classified Information

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

PART 1—DEFINITIONS, ACCESS TO CLASSIFIED INFORMATION, FINANCIAL DISCLOSURE, AND OTHER ITEMS

Section 1.1. *Definitions.* For the purposes of this order: (a) ''Agency'' means any ''Executive agency,'' as defined in 5 U.S.C. 105, the ''military departments,'' as defined in 5 U.S.C. 102, and any other entity within the executive branch that comes into the possession of classified information, including the Defense Intelligence Agency, National Security Agency, and the National Reconnaissance Office.

(b) ''Applicant'' means a person other than an employee who has received an authorized conditional offer of employment for a position that requires access to classified information.

(c) ''Authorized investigative agency'' means an agency authorized by law or regulation to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(d) ''Classified information'' means information that has been determined pursuant to Executive Order No. 12958, or any successor order, Executive Order No. 12951, or any successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011), to require protection against unauthorized disclosure.

(e) ''Employee'' means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(f) ''Foreign power'' and ''agent of a foreign power'' have the meaning provided in 50 U.S.C. 1801.

(g) ''Need for access'' means a determination that an employee requires access to a particular level of classified information in order to perform or assist in a lawful and authorized governmental function.

(h) ''Need-to-know'' means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(i) ''Overseas Security Policy Board'' means the Board established by the President to consider, develop, coordinate and promote policies, standards and agreements on overseas security operations, programs and projects that affect all United States Government agencies under the authority of a Chief of Mission.

(j) ''Security Policy Board'' means the Board established by the President to consider, coordinate, and recommend policy directives for U.S. security policies, procedures, and practices.

(k) ''Special access program'' has the meaning provided in section 4.1 of Executive Order No. 12958, or any successor order.

Sec. 1.2. *Access to Classified Information.* (a) No employee shall be granted access to classified information unless that employee has been determined to be eligible in accordance with this order and to possess a need-to-know.

(b) Agency heads shall be responsible for establishing and maintaining an effective program to ensure that access to classified information by each employee is clearly consistent with the interests of the national security.

(c) Employees shall not be granted access to classified information unless they:

(1) have been determined to be eligible for access under section 3.1 of this order by agency heads or designated officials based upon a favorable adjudication of an appropriate investigation of the employee's background;

(2) have a demonstrated need-to-know; and

(3) have signed an approved nondisclosure agreement.

(d) All employees shall be subject to investigation by an appropriate government authority prior to being granted access to classified information and at any time during the period of access to ascertain whether they continue to meet the requirements for access.

(e)(1) All employees granted access to classified information shall be required as a condition of such access to provide to the employing agency written consent permitting access by an authorized investigative agency, for such time as access to classified information is maintained and for a period of 3 years thereafter, to:

(A) relevant financial records that are maintained by a financial institution as defined in 31 U.S.C. 5312(a) or by a holding company as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401);

(B) consumer reports pertaining to the employee under the Fair Credit Reporting Act (15 U.S.C. 1681a); and

(C) records maintained by commercial entities within the United States pertaining to any travel by the employee outside the United States.

(2) Information may be requested pursuant to employee consent under this section where:

(A) there are reasonable grounds to believe, based on credible information, that the employee or former employee is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;

(B) information the employing agency deems credible indicates the employee or former employee has incurred excessive indebtedness or has ac-

quired a level of affluence that cannot be explained by other information; or

(C) circumstances indicate the employee or former employee had the capability and opportunity to disclose classified information that is known to have been lost or compromised to a foreign power or an agent of a foreign power.

(3) Nothing in this section shall be construed to affect the authority of an investigating agency to obtain information pursuant to the Right to Financial Privacy Act, the Fair Credit Reporting Act or any other applicable law.

Sec. 1.3. *Financial Disclosure.* (a) Not later than 180 days after the effective date of this order, the head of each agency that originates, handles, transmits, or possesses classified information shall designate each employee, by position or category where possible, who has a regular need for access to classified information that, in the discretion of the agency head, would reveal:

(1) the identity of covert agents as defined in the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421);

(2) technical or specialized national intelligence collection and processing systems that, if disclosed in an unauthorized manner, would substantially negate or impair the effectiveness of the system;

(3) the details of:

(A) the nature, contents, algorithm, preparation, or use of any code, cipher, or cryptographic system or;

(B) the design, construction, functioning, maintenance, or repair of any cryptographic equipment; but not including information concerning the use of cryptographic equipment and services;

(4) particularly sensitive special access programs, the disclosure of which would substantially negate or impair the effectiveness of the information or activity involved; or

(5) especially sensitive nuclear weapons design information (but only for those positions that have been certified as being of a high degree of importance or sensitivity, as described in section 145(f) of the Atomic Energy Act of 1954, as amended).

(b) An employee may not be granted access, or hold a position designated as requiring access, to information described in subsection (a) unless, as a condition of access to such information, the employee:

(1) files with the head of the agency a financial disclosure report, including information with respect to the spouse and dependent children of the employee, as part of all background investigations or reinvestigations;

(2) is subject to annual financial disclosure requirements, if selected by the agency head; and

(3) files relevant information concerning foreign travel, as determined by the Security Policy Board.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop procedures for the implementation of this section, including a standard financial disclosure form for use by employees under subsection (b) of this section, and agency heads shall identify certain employees, by position or category, who are subject to annual financial disclosure.

Sec. 1.4. *Use of Automated Financial Record Data Bases.* As part of all investigations and reinvestigations described in section 1.2(d) of this order, agencies may request the Department of the Treasury, under terms and conditions prescribed by the Secretary of the Treasury, to search automated data bases consisting of reports of currency transactions by financial institutions, international transportation of currency or monetary instruments, foreign bank and financial accounts, transactions under $10,000 that are reported as possible money laundering violations, and records of foreign travel.

Sec. 1.5. *Employee Education and Assistance.* The head of each agency that grants access to classified information shall establish a program for employees with access to classified information to: (a) educate employees about individual responsibilities under this order; and

(b) inform employees about guidance and assistance available concerning issues that may affect their eligibility for access to classified information, including sources of assistance for employees who have questions or concerns about financial matters, mental health, or substance abuse.

PART 2—ACCESS ELIGIBILITY POLICY AND PROCEDURE

Sec. 2.1. *Eligibility Determinations.* (a) Determinations of eligibility for access to classified information shall be based on criteria established under this order. Such determinations are separate from suitability determinations with respect to the hiring or retention of persons for employment by the government or any other personnel actions.

(b) The number of employees that each agency determines are eligible for access to classified information shall be kept to the minimum required for the conduct of agency functions.

(1) Eligibility for access to classified information shall not be requested or granted solely to permit entry to, or ease of movement within, controlled areas when the employee has no need for access and access to classified information may reasonably be prevented. Where circumstances indicate employees may be inadvertently exposed to classified information in the course of their duties, agencies are authorized to grant or deny, in their discretion, facility access approvals to such employees based on an appropriate level of investigation as determined by each agency.

(2) Except in agencies where eligibility for access is a mandatory condition of employment, eligibility for access to classified information shall only be requested or granted based on a demonstrated, foreseeable need for access. Requesting or approving eligibility in excess of actual requirements is prohibited.

(3) Eligibility for access to classified information may be granted where there is a temporary need for access, such as one-time participation in a classified project, provided the investigative standards established under this order have been satisfied. In such cases, a fixed date or event for expiration shall be identified and access to classified information shall be limited to information related to the particular project or assignment.

(4) Access to classified information shall be terminated when an employee no longer has a need for access.

Sec. 2.2. *Level of Access Approval.* (a) The level at which an access approval is granted for an employee shall be limited, and relate directly, to the level of classified information for which there is a need for access. Eligibility for access to a higher level of classified information includes eligibility for access to information classified at a lower level.

(b) Access to classified information relating to a special access program shall be granted in accordance with procedures established by the head of the agency that created the program or, for programs pertaining to intelligence activities (including special activities but not including military operational, strategic, and tactical programs) or intelligence sources and methods, by the Director of Central Intelligence. To the extent possible and consistent with the national security interests of the United States, such procedures shall be consistent with the standards and procedures established by and under this order.

Sec. 2.3 *Temporary Access to Higher Levels.* (a) An employee who has been determined to be eligible for access to classified information based on favorable adjudication of a completed investigation may be granted temporary access to a higher level where security personnel authorized by the agency head to make access eligibility determinations find that such access:

(1) is necessary to meet operational or contractual exigencies not expected to be of a recurring nature;

(2) will not exceed 180 days; and

(3) is limited to specific, identifiable information that is made the subject of a written access record.

(b) Where the access granted under subsection (a) of this section involves another agency's classified information, that agency must concur before access to its information is granted.

Sec. 2.4. *Reciprocal Acceptance of Access Eligibility Determinations.* (a) Except when an agency has substantial information indicating that an employee may not satisfy the standards in section 3.1 of this order, background investi-gations and eligibility determinations conducted under this order shall be mutually and reciprocally accepted by all agencies.

(b) Except where there is substantial information indicating that the employee may not satisfy the standards in section 3.1 of this order, an employee with existing access to a special access program shall not be denied eligibility for access to another special access program at the same sensitivity level as determined personally by the agency head or deputy agency head, or have an existing access eligibility readjudicated, so long as the employee has a need for access to the information involved.

(c) This section shall not preclude agency heads from establishing additional, but not duplicative, investigative or adjudicative procedures for a special access program or for candidates for detail or assignment to their agencies, where such procedures are required in exceptional circumstances to protect the national security.

(d) Where temporary eligibility for access is granted under sections 2.3 or 3.3 of this order or where the determination of eligibility for access is conditional, the fact of such temporary or conditional access shall be conveyed to any other agency that considers affording the employee access to its information.

Sec. 2.5. *Specific Access Requirement.* (a) Employees who have been determined to be eligible for access to classified information shall be given access to classified information only where there is a need-to-know that information.

(b) It is the responsibility of employees who are authorized holders of classified information to verify that a prospective recipient's eligibility for access has been granted by an authorized agency official and to ensure that a need-to-know exists prior to allowing such access, and to challenge requests for access that do not appear well-founded.

Sec. 2.6. *Access by Non-United States Citizens.* (a) Where there are compelling reasons in furtherance of an agency mission, immigrant alien and foreign national employees who possess a special expertise may, in the discretion of the agency, be granted limited access to classified information only for specific programs, projects, contracts, licenses, certificates, or grants for which there is a need for access. Such individuals shall not be eligible for access to any greater level of classified information than the United States Govern-ment has determined may be releasable to the country of which the subject is currently a citizen, and such limited access may be approved only if the prior 10 years of the subject's life can be appropriately investigated. If there are any doubts concerning granting access, additional lawful investigative procedures shall be fully pursued.

(b) Exceptions to these requirements may be permitted only by the agency head or the senior agency official designated under section 6.1 of this order to further substantial national security interests.

PART 3—ACCESS ELIGIBILITY STANDARDS

Sec. 3.1. *Standards.* (a) No employee shall be deemed to be eligible for access to classified information merely by reason of Federal service or con-

tracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(b) Except as provided in sections 2.6 and 3.3 of this order, eligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(e) No negative inference concerning the standards in this section may be raised solely on the basis of mental health counseling. Such counseling can be a positive factor in eligibility determinations. However, mental health counseling, where relevant to the adjudication of access to classified information, may justify further inquiry to determine whether the standards of subsection (b) of this section are satisfied, and mental health may be considered where it directly relates to those standards.

(f) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of adjudicative guidelines for determining eligibility for access to classified information, including access to special access programs.

Sec. 3.2. *Basis for Eligibility Approval.* (a) Eligibility determinations for access to classified information shall be based on information concerning the applicant or employee that is acquired through the investigation conducted pursuant to this order or otherwise available to security officials and shall be made part of the applicant's or employee's security record. Applicants or employees shall be required to provide relevant information pertaining to their background and character for use in investigating and adjudicating their eligibility for access.

(b) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of investigative standards for background investigations for access to classified information. These standards may vary for the various levels of access.

(c) Nothing in this order shall prohibit an agency from utilizing any lawful investigative procedure in addition to the investigative requirements set forth in this order and its implementing regulations to resolve issues that may arise during the course of a background investigation or reinvestigation.

Sec. 3.3. *Special Circumstances.* (a) In exceptional circumstances where official functions must be performed prior to the completion of the investigative and adjudication process, temporary eligibility for access to classified information may be granted to an employee while the initial investigation is underway. When such eligibility is granted, the initial investigation shall be expedited.

(1) Temporary eligibility for access under this section shall include a justification, and the employee must be notified in writing that further access is expressly conditioned on the favorable completion of the investigation and issuance of an access eligibility approval. Access will be immediately terminated, along with any assignment requiring an access eligibility approval, if such approval is not granted.

(2) Temporary eligibility for access may be granted only by security personnel authorized by the agency head to make access eligibility determinations and shall be based on minimum investigative standards developed by the Security Policy Board not later than 180 days after the effective date of this order.

(3) Temporary eligibility for access may be granted only to particular, identified categories of classified information necessary to perform the lawful and authorized functions that are the basis for the granting of temporary access.

(b) Nothing in subsection (a) shall be construed as altering the authority of an agency head to waive requirements for granting access to classified information pursuant to statutory authority.

(c) Where access has been terminated under section 2.1(b)(4) of this order and a new need for access arises, access eligibility up to the same level shall be reapproved without further investigation as to employees who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years, provided they have remained employed by the same employer during the period in question, the employee certifies in writing that there has been no change in the relevant information provided by the employee for the last background investigation, and there is no information that would tend to indicate the employee may no longer satisfy the standards established by this order for access to classified information.

(d) Access eligibility shall be reapproved for individuals who were determined to be eligible based on a favorable adjudication of an investigation completed within the prior 5 years and who have been retired or otherwise separated from United States Government employment for not more than 2 years; provided there is no indication the individual may no longer satisfy the standards of this order, the individual certifies in writing that there has been no change in the relevant information provided by the individual for the last background investigation, and an appropriate record check reveals no unfavorable information.

Sec. 3.4. *Reinvestigation Requirements.* (a) Because circumstances and characteristics may change dramatically over time and thereby alter the eligibility of employees for continued access to classified information, reinvestigations shall be conducted with the same priority and care as initial investigations.

(b) Employees who are eligible for access to classified information shall be the subject of periodic reinvestigations and may also be reinvestigated if, at any time, there is reason to believe that they may no longer meet the standards for access established in this order.

(c) Not later than 180 days after the effective date of this order, the Security Policy Board shall develop a common set of reinvestigative standards, including the frequency of reinvestigations.

PART 4—INVESTIGATIONS FOR FOREIGN GOVERNMENTS

Sec. 4. *Authority.* Agencies that conduct background investigations, including the Federal Bureau of Investigation and the Department of State, are authorized to conduct personnel security investigations in the United States when requested by a foreign government as part of its own personnel security program and with the consent of the individual.

PART 5—REVIEW OF ACCESS DETERMINATIONS

Sec. 5.1. *Determinations of Need for Access.* A determination under section 2.1(b)(4) of this order that an employee does not have, or no longer has, a need for access is a discretionary determination and shall be conclusive.

Sec. 5.2. *Review Proceedings for Denials or Revocations of Eligibility for Access.* (a) Applicants and employees who are determined to not meet the standards for access to classified information established in section 3.1 of this order shall be:

(1) provided as comprehensive and detailed a written explanation of the basis for that conclusion as the national security interests of the United States and other applicable law permit;

(2) provided within 30 days, upon request and to the extent the documents would be provided if requested under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (3 U.S.C. 552a), as applicable, any documents, records, and reports upon which a denial or revocation is based;

(3) informed of their right to be represented by counsel or other representative at their own expense; to request any documents, records, and reports as described in section 5.2(a)(2) upon which a denial or revocation is based; and to request the entire investigative file, as permitted by the national security and other applicable law, which, if requested, shall be promptly provided prior to the time set for a written reply;

(4) provided a reasonable opportunity to reply in writing to, and to request a review of, the determination;

(5) provided written notice of and reasons for the results of the review, the identity of the deciding authority, and written notice of the right to appeal;

(6) provided an opportunity to appeal in writing to a high level panel, appointed by the agency head, which shall be comprised of at least three members, two of whom shall be selected from outside the security field. Decisions of the panel shall be in writing, and final except as provided in subsection (b) of this section; and

(7) provided an opportunity to appear personally and to present relevant documents, materials, and information at some point in the process before an adjudicative or other authority, other than the investigating entity, as determined by the agency head. A written summary or recording of such appearance shall be made part of the applicant's or employee's security record, unless such appearance occurs in the presence of the appeals panel described in subsection (a)(6) of this section.

(b) Nothing in this section shall prohibit an agency head from personally exercising the appeal authority in subsection (a)(6) of this section based upon recommendations from an appeals panel. In such case, the decision of the agency head shall be final.

(c) Agency heads shall promulgate regulations to implement this section and, at their sole discretion and as resources and national security considerations permit, may provide additional review proceedings beyond those required by subsection (a) of this section. This section does not require additional proceedings, however, and creates no procedural or substantive rights.

(d) When the head of an agency or principal deputy personally certifies that a procedure set forth in this section cannot be made available in a particular case without damaging the national security interests of the United States by revealing classified information, the particular procedure shall not be made available. This certification shall be conclusive.

(e) This section shall not be deemed to limit or affect the responsibility and power of an agency head pursuant to any law or other Executive order to deny or terminate access to classified information in the interests

of national security. The power and responsibility to deny or terminate access to classified information pursuant to any law or other Executive order may be exercised only where the agency head determines that the procedures prescribed in subsection (a) of this section cannot be invoked in a manner that is consistent with national security. This determination shall be conclusive.

(f)(1) This section shall not be deemed to limit or affect the responsibility and power of an agency head to make determinations of suitability for employment.

(2) Nothing in this section shall require that an agency provide the procedures prescribed in subsection (a) of this section to an applicant where a conditional offer of employment is withdrawn for reasons of suitability or any other reason other than denial of eligibility for access to classified information.

(3) A suitability determination shall not be used for the purpose of denying an applicant or employee the review proceedings of this section where there has been a denial or revocation of eligibility for access to classified information.

PART 6—IMPLEMENTATION

Sec. 6.1. *Agency Implementing Responsibilities.* Heads of agencies that grant employees access to classified information shall: (a) designate a senior agency official to direct and administer the agency's personnel security program established by this order. All such programs shall include active oversight and continuing security education and awareness programs to ensure effective implementation of this order;

(b) cooperate, under the guidance of the Security Policy Board, with other agencies to achieve practical, consistent, and effective adjudicative training and guidelines; and

(c) conduct periodic evaluations of the agency's implementation and administration of this order, including the implementation of section 1.3(a) of this order. Copies of each report shall be provided to the Security Policy Board.

Sec. 6.2. *Employee Responsibilities.* (a) Employees who are granted eligibility for access to classified information shall:

(1) protect classified information in their custody from unauthorized disclosure;

(2) report all contacts with persons, including foreign nationals, who seek in any way to obtain unauthorized access to classified information;

(3) report all violations of security regulations to the appropriate security officials; and

(4) comply with all other security requirements set forth in this order and its implementing regulations.

(b) Employees are encouraged and expected to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

Sec. 6.3. *Security Policy Board Responsibilities and Implementation.* (a) With respect to actions taken by the Security Policy Board pursuant to sections 1.3(c), 3.1(f), 3.2(b), 3.3(a)(2), and 3.4(c) of this order, the Security Policy Board shall make recommendations to the President through the Assistant to the President for National Security Affairs for implementation.

(b) Any guidelines, standards, or procedures developed by the Security Policy Board pursuant to this order shall be consistent with those guidelines issued by the Federal Bureau of Investigation in March 1994 on Background Investigations Policy/Guidelines Regarding Sexual Orientation.

(c) In carrying out its responsibilities under this order, the Security Policy Board shall consult where appropriate with the Overseas Security Policy Board. In carrying out its responsibilities under section 1.3(c) of this order, the Security Policy Board shall obtain the concurrence of the Director of the Office of Management and Budget.

Sec. 6.4. *Sanctions.* Employees shall be subject to appropriate sanctions if they knowingly and willfully grant eligibility for, or allow access to, classified information in violation of this order or its implementing regulations. Sanctions may include reprimand, suspension without pay, removal, and other actions in accordance with applicable law and agency regulations.

PART 7—GENERAL PROVISIONS

Sec. 7.1. *Classified Information Procedures Act.* Nothing in this order is intended to alter the procedures established under the Classified Information Procedures Act (18 U.S.C. App. 1).

Sec. 7.2. *General.* (a) Information obtained by an agency under sections 1.2(e) or 1.3 of this order may not be disseminated outside the agency, except to:

(1) the agency employing the employee who is the subject of the records or information;

(2) the Department of Justice for law enforcement or counterintelligence purposes; or

(3) any agency if such information is clearly relevant to the authorized responsibilities of such agency.

(b) The Attorney General, at the request of the head of an agency, shall render an interpretation of this order with respect to any question arising in the course of its administration.

(c) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control, except that this order shall not diminish or otherwise affect the requirements of Executive Order No. 10450, the denial and revocation procedures provided to individuals covered by Executive Order No. 10865, as amended, or access by historical researchers and former presidential appointees under Executive Order No. 12958 or any successor order.

(d) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order shall not be affected.

(e) This Executive order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(f) This order is effective immediately.

THE WHITE HOUSE,
August 2, 1995.

[FR Doc. 95–19654
Filed 8–4–95; 12:18 pm]
Billing code 3195–01–P

Presidential Documents

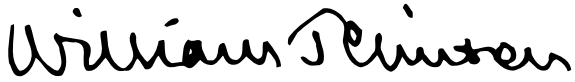
Presidential Determination No. 95–32 of July 28, 1995

Eligibility of Angola To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing of defense articles and services to the Government of the Republic of Angola will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 28, 1995.

JUSTIFICATION FOR PRESIDENTIAL DETERMINATION OF ELIGIBILITY OF ANGOLA TO BE FURNISHED MILITARY ASSISTANCE UNDER THE FOREIGN ASSISTANCE ACT OF 1961 AND THE ARMS EXPORT CONTROL ACT

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will ''strengthen the security of the United States and promote world peace.''

The search for peace in Angola, the source of seven percent of U.S. oil imports, has been a central security concern of U.S. policy in Africa since Angola's independence in 1975. As the last nation in southern Africa to make the transition to peace, democracy, and stability, Angola will complete the regional transition already effected by its neighbors, including Namibia, South Africa, and Mozambique.

The United States played a key role in the UN-sponsored negotiations which produced the Lusaka Protocol and the current cease-fire. The difficult process of national reconciliation in Angola will be hampered by the destruction caused by three decades of civil war. Among the most devastating legacies is the estimated 10 million landmines throughout the country. These landmines, both anti-tank and anti-personnel, seriously hinder the UN's efforts to deploy peacekeeping troops and they prevent Angola from reconstructing its shattered economy.

Angola has been designated as a priority country for USG demining assistance by the Interagency Working Group on Demining and Landmine Control. The Department believes that Angola is an appropriate country to receive

USG demining assistance both because of the recent need and because of a combination of favorable factors.

- Both the GRA and UNITA recognize the gravity of the landmine situation. Both support international, particularly, U.S., involvement in the demining program.

- Both the Angolan government and UNITA, through the UN, have requested demining equipment to allow indigenous deminers to begin the process of opening roads and returning agricultural fields to productivity. Angolan government and UNITA soldiers are actively demining without adequate equipment and are suffering casualties.

- A coordinated, effective demining program will be the key to the efficient deployment of UN peacekeepers, the provision of humanitarian assistance, and the free flow of people and goods.

Providing non-lethal defense articles and services to Angola pursuant to the Foreign Assistance Act and Arms Export Control Act authorities will further our long-term goals of promoting stability both in Angola and throughout southern Africa, thereby strengthening the security of the United States and promoting world peace.

[FR Doc. 95–19645
Filed 8–4–95; 11:20 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 95–33 of July 31, 1995

Determination To Authorize the Furnishing of Emergency Military Assistance to the United Nations for Purposes of Supporting the Rapid Reaction Force in Bosnia Under Section 506(a)(1) of the Foreign Assistance Act

Memorandum for the Secretary of State [and] the Secretary of Defense

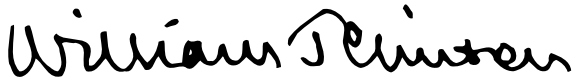
Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the ''Act''), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to an international organization; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $3,000,000 in defense articles and defense services from the Department of Defense to the United Nations for purposes of supporting the Rapid Reaction Force in Bosnia.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 31, 1995.

[FR Doc. 95–19646
Filed 8–4–95; 11:21 am]
Billing code 4710–10–M

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19 Parts:			
1–140	(869–026–00061–1)	25.00	April 1, 1995
141–199	(869–026–00062–0)	21.00	[9] Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00068–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–022–00078–1)	36.00	Apr. 1, 1994
200–499	(869–022–00079–9)	38.00	Apr. 1, 1994
*220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–022–00080–2)	20.00	Apr. 1, 1994
*700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
700–1699	(869–022–00081–1)	39.00	Apr. 1, 1994
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–022–00091–8)	24.00	Apr. 1, 1994
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–000101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50–299	(869–026–00102–2)	14.00	Apr. 1, 1995
300–499	(869–026–00103–1)	24.00	Apr. 1, 1995
500–599	(869–026–00104–9)	6.00	[4] Apr. 1, 1990
600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[8] Apr. 1, 1994
28 Parts:			
1-42	(869–022–00105–1)	27.00	July 1, 1994
43-end	(869-022-00106-0)	21.00	July 1, 1994
29 Parts:			
0–99	(869–022–00107–8)	21.00	July 1, 1994
100–499	(869–022–00108–6)	9.50	July 1, 1994
500–899	(869–022–00109–4)	35.00	July 1, 1994
900–1899	(869–022–00110–8)	17.00	July 1, 1994
1900–1910 (§§ 1901.1 to 1910.999)	(869–022–00111–6)	33.00	July 1, 1994
1910 (§§ 1910.1000 to end)	(869–022–00112–4)	21.00	July 1, 1994
1911–1925	(869–022–00113–2)	26.00	July 1, 1994
1926	(869–022–00114–1)	33.00	July 1, 1994
1927–End	(869–022–00115–9)	36.00	July 1, 1994
30 Parts:			
1–199	(869–022–00116–7)	27.00	July 1, 1994
200–699	(869–022–00117–5)	19.00	July 1, 1994
700–End	(869–022–00118–3)	27.00	July 1, 1994
31 Parts:			
0–199	(869–022–00119–1)	18.00	July 1, 1994
200–End	(869–022–00120–5)	30.00	July 1, 1994
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–022–00121–3)	31.00	July 1, 1994
191–399	(869–022–00122–1)	36.00	July 1, 1994
400–629	(869–022–00123–0)	26.00	July 1, 1994
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–022–00125–6)	21.00	July 1, 1994
800–End	(869–022–00126–4)	22.00	July 1, 1994
33 Parts:			
1–124	(869–022–00127–2)	20.00	July 1, 1994
125–199	(869–022–00128–1)	26.00	July 1, 1994
200–End	(869–022–00129–9)	24.00	July 1, 1994
34 Parts:			
1–299	(869–022–00130–2)	28.00	July 1, 1994
300–399	(869–022–00131–1)	21.00	July 1, 1994
400–End	(869–022–00132–9)	40.00	July 1, 1994
35	(869–022–00133–7)	12.00	July 1, 1994
36 Parts:			
1–199	(869–022–00134–5)	15.00	July 1, 1994
200–End	(869–022–00135–3)	37.00	July 1, 1994
37	(869–022–00136–1)	20.00	July 1, 1994
38 Parts:			
0–17	(869–022–00137–0)	30.00	July 1, 1994
18–End	(869–022–00138–8)	29.00	July 1, 1994
39	(869–022–00139–6)	16.00	July 1, 1994
40 Parts:			
1–51	(869–022–00140–0)	39.00	July 1, 1994
52	(869–022–00141–8)	39.00	July 1, 1994
53–59	(869–022–00142–6)	11.00	July 1, 1994
60	(869-022-00143-4)	36.00	July 1, 1994
61–80	(869–022–00144–2)	41.00	July 1, 1994
81–85	(869–022–00145–1)	23.00	July 1, 1994
86–99	(869–022–00146–9)	41.00	July 1, 1994
100–149	(869–022–00147–7)	39.00	July 1, 1994
150–189	(869–022–00148–5)	24.00	July 1, 1994
190–259	(869–022–00149–3)	18.00	July 1, 1994
260–299	(869–022–00150–7)	36.00	July 1, 1994
300–399	(869–022–00151–5)	18.00	July 1, 1994
400–424	(869–022–00152–3)	27.00	July 1, 1994
425–699	(869–022–00153–1)	30.00	July 1, 1994
700–789	(869–022–00154–0)	28.00	July 1, 1994
790–End	(869–022–00155–8)	27.00	July 1, 1994
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–022–00156–6)	9.50	July 1, 1994
101	(869–022–00157–4)	29.00	July 1, 1994
102–200	(869–022–00158–2)	15.00	July 1, 1994
201–End	(869–022–00159–1)	13.00	July 1, 1994
42 Parts:			
1–399	(869–022–00160–4)	24.00	Oct. 1, 1994
400–429	(869–022–00161–2)	26.00	Oct. 1, 1994
430–End	(869–022–00162–1)	36.00	Oct. 1, 1994
43 Parts:			
1–999	(869–022–00163–9)	23.00	Oct. 1, 1994
1000–3999	(869–022–00164–7)	31.00	Oct. 1, 1994
4000–End	(869–022–00165–5)	14.00	Oct. 1, 1994
44	(869–022–00166–3)	27.00	Oct. 1, 1994
45 Parts:			
1–199	(869–022–00167–1)	22.00	Oct. 1, 1994
200–499	(869–022–00168–0)	15.00	Oct. 1, 1994
500–1199	(869–022–00169–8)	32.00	Oct. 1, 1994
1200–End	(869–022–00170–1)	26.00	Oct. 1, 1994
46 Parts:			
1–40	(869–022–00171–0)	20.00	Oct. 1, 1994
41–69	(869–022–00172–8)	16.00	Oct. 1, 1994
70–89	(869–022–00173–6)	8.50	Oct. 1, 1994
90–139	(869–022–00174–4)	15.00	Oct. 1, 1994
140–155	(869–022–00175–2)	12.00	Oct. 1, 1994
156–165	(869–022–00176–1)	17.00	[7] Oct. 1, 1993
166–199	(869–022–00177–9)	17.00	Oct. 1, 1994
200–499	(869–022–00178–7)	21.00	Oct. 1, 1994
500–End	(869–022–00179–5)	15.00	Oct. 1, 1994
47 Parts:			
0–19	(869–022–00180–9)	25.00	Oct. 1, 1994
20–39	(869–022–00181–7)	20.00	Oct. 1, 1994
40–69	(869–022–00182–5)	14.00	Oct. 1, 1994
70–79	(869–022–00183–3)	24.00	Oct. 1, 1994
80–End	(869–022–00184–1)	26.00	Oct. 1, 1994
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–022–00187–6)	16.00	Oct. 1, 1994
2 (Parts 252–299)	(869–022–00188–4)	13.00	Oct. 1, 1994
3–6	(869–022–00189–2)	23.00	Oct. 1, 1994
7–14	(869–022–00190–6)	30.00	Oct. 1, 1994
15–28	(869–022–00191–4)	32.00	Oct. 1, 1994
29–End	(869–022–00192–2)	17.00	Oct. 1, 1994
49 Parts:			
1–99	(869–022–00193–1)	24.00	Oct. 1, 1994
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–022–00195–7)	21.00	Oct. 1, 1994
200–399	(869–022–00196–5)	30.00	Oct. 1, 1994
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–022–00198–1)	19.00	Oct. 1, 1994
1200–End	(869–022–00199–0)	15.00	Oct. 1, 1994
50 Parts:			
1–199	(869–022–00200–7)	25.00	Oct. 1, 1994
200–599	(869–022–00201–5)	22.00	Oct. 1, 1994
600–End	(869–022–00202–3)	27.00	Oct. 1, 1994

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
Complete 1995 CFR set		883.00	1995
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1992
Complete set (one-time mailing)		223.00	1993
Complete set (one-time mailing)		244.00	1994
Subscription (mailed as issued)		264.00	1995
Individual copies		1.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

[9] Note: Title 19, CFR Parts 141-199, revised 4-1-95 volume is being republished to restore inadvertently omitted text.