11–8–95
Vol. 60 No. 216
Pages 56223–56502

Federal Register

Wednesday
November 8, 1995

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

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

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

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

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the Federal Register Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

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

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

[Three Sessions]

WHEN:	November 14 at 9:00 am November 28 at 9:00 am December 5 at 9:00 am
WHERE:	Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS:	202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 60, No. 216

Wednesday, November 8, 1995

Administrative Conference of the United States
NOTICES
Recommendations:
Administrative practice and procedure, 56312–56316

Agriculture Department
See Commodity Credit Corporation
See Federal Crop Insurance Corporation
See Foreign Agricultural Service
See Forest Service
RULES
Organization, functions, and authority delegations:
Reorganization, 56392–56465

Army Department
See Engineers Corps
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 56322

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Surveys, determinations, etc.:
American Community, 56318–56319

Commerce Department
See Census Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Credit Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Market promotion program, 56316

Defense Department
See Army Department
See Engineers Corps
See Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Hoffmann-LaRoche, Inc., 56354
Schade, Hugh I., M.D., 56354–56356

Education Department
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 56323

Employment and Training Administration
NOTICES
Meetings:
Unemployment Compensation Advisory Council, 56357

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site Specific Advisory Board—
Kirtland Area Office (Sandia), 56323–56324
Patent licenses; non-exclusive, exclusive, or partially exclusive:
CTM Tech, Inc., 56324

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
FDA mega-laboratory, CA; real estate acquisition and construction, 56322–56323

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 56238–56241
New Mexico, 56241–56244
Texas, 56244–56246
PROPOSED RULES
Air programs:
State operating permit programs—
Tennessee, 56281–56289
Air quality implementation plans; approval and promulgation; various States:
Illinois, 56279–56280
New Mexico, 56280
Texas, 56280–56281
Hazardous waste:
Military munitions rule; explosives emergencies; redefinition of on-site, 56468–56495
NOTICES
Organization, functions, and authority delegations:
CERCLA Superfund Docket and Documents Center; relocation, 56333
Pesticide registration, cancellation, etc.:
Bicep 4.51, etc., 56333–56335
Superfund; response and remedial actions; proposed settlements, etc.:
Aluminum Co. of America Superfund Site, NY, 56335–56336
Denune, Harry C., et al., 56336

Federal Aviation Administration
RULES
Airworthiness directives:
Hamilton, 56224–56229
Airworthiness standards:
Special conditions—
Bombardier Inc.; high-intensity radiated fields, 56223–56224
PROPOSED RULES
Airworthiness directives:
Airbus, 56270–56274
Saab, 56274–56276
Class E airspace, 56276–56278
Rulemaking petitions; summary and disposition, 56269–56270

NOTICES
Airport noise compatibility program:
Noise exposure map—
McGhee-Tyson Airport, TN, 56384–56385
Exemption petitions; summary and disposition, 56385–56386
Passenger facility charges; applications, etc.:
Massena International Airport, NY, 56386

Federal Communications Commission
RULES
Radio stations; table of assignments:
Illinois, 56255
PROPOSED RULES
Radio stations; table of assignments:
Georgia, 56310
Maryland, 56310–56311
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 56336–56337

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance endorsements, etc.:
Hybrid sorghum seed and rice, etc.; prevented planting benefits expansion; 1996 crop year for spring crops with contract change dates after effective date, 56257–56268

Federal Election Commission
PROPOSED RULES
Rulemaking petitions:
Essaye, Anthony F., et al., 56268–56269

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 56249–56251
Connecticut et al., 56251–56252
Florida et al., 56253–56255
Illinois et al., 56252–56253
PROPOSED RULES
Flood elevation determinations:
Arkansas et al., 56300–56307
Georgia et al., 56307–56310

Federal Energy Regulatory Commission
PROPOSED RULES
Practice and procedure:
Hydroelectric projects; relicensing procedures; rulemaking petition, 56278–56279
NOTICES
Electric rate and corporate regulation filings:
Alabama Power Co. et al., 56324–56325
Milford Power Associates et al., 56325–56327
Applications, hearings, determinations, etc.:
Boyd Rosene & Associates, Inc., 56327
Columbia Gas Transmission Corp., 56327–56328
ConAgra Energy Services, 56328
El Paso Natural Gas Co., 56328
Enpower, Inc., 56328–56329
Equitrans, Inc., 56329
Iroquois Gas Transmission System, L.P., 56329
Koch Gateway Pipeline Co., 56329–56330
Natural Gas Pipeline Co. of America, 56330
Northern Border Pipeline Co., 56330–56331
North Penn Gas Co., 56330
Northwest Pipeline Corp., 56331
Pacific Gas Transmission Co., 56331
Superior Electric Power Corp., 56331–56332
Texas Gas Transmission Corp., 56332
Vantus Energy Corp., 56332–56333
WestGas InterState, Inc., 56332
Williams Natural Gas Co., 56332

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Arkansas National Bancshares, Inc., et al., 56337–56338
Mahurin, Peter, 56338

Federal Trade Commission
RULES
Industry guides:
New automobiles; fuel economy advertising guide, 56230–56232
NOTICES
Prohibited trade practices:
Stop & Shop Cos., Inc., et al., 56338–56344

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 56351
Environmental statements; availability, etc.:
Incidental take permits—
Sand City, CA; Smith's blue butterfly, etc., 56351–56352

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 56345

Foreign Agricultural Service
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 56316–56317

Forest Service
NOTICES
Meetings:
Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee, 56317
Willamette Provincial Interagency Executive Committee Advisory Committee, 56317
National Forest System lands:
Outfitting and guiding permit policy and fees assessment; correction, 56317–56318

General Services Administration
RULES
Federal Information Resources Management Regulation:
Contracts for multi-agency use, 56248–56249
Federal property management:
Aviation, transportation, and motor vehicles—
Official travel cash use, 56246–56248

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health

See Public Health Service
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 56345

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Mortgages insured under section 235(r) of National Housing Act; refinancing, 56498–56501
NOTICES
Grants and cooperative agreements; availability, etc.:
Historically black colleges and universities program, 56348–56349

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

International Trade Commission
NOTICES
Import investigations:
Foam extruded PVC and polystyrene framing stock from—
United Kingdom, 56352–56353
Memory devices with increased capacitance and products containing same, 56353
Roses from—
Israel, 56353

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Railway Co., 56354

Justice Department
See Drug Enforcement Administration

Labor Department
See Employment and Training Administration
See Occupational Safety and Health Administration
NOTICES
Meetings:
Glass Ceiling Commission, 56356

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Book Cliffs Resource Area, UT, 56349
Range management:
Grazing administration
Colorado, 56349–56350

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities National Council, 56357

National Institutes of Health
NOTICES
Meetings:
AIDS Research Program Evaluation Working Group, 56345–56346
National Cancer Institute, 56346–56347
National Institute of Allergy and Infectious Diseases, 56347
Research Grants Division special emphasis panels, 56347–56348

National Labor Relations Board
RULES
Procedural rules;
Filing and service of documents; facsimile transmission requirements, etc., 56233–56237

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 56255–56256
NOTICES
Meetings:
Caribbean Fishery Management Council, 56319
Ocean Features Analysis, Sea Surface Temperature Analysis, and Surface FeatureTracking Analysis; production and distribution discontinuation, 56319–56320

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS John S. McCain, 56237–56238

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consolidated Edison Co. of New York, Inc., 56357–56359
Generic letters:
Boraflex degradation in spent fuel pool storage racks, 56359–56361
Bulletin 95–02, unexpected clogging of residual heat removal pump strainer while operating in suppression pool cooling mode, 56361
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 56361–56378
Safety analysis and evaluation reports; availability, etc.:
Tennessee Valley Authority, 56378–56379
Applications, hearings, determinations, etc.:
Jefferson Proving Ground, IN, 56379

Occupational Safety and Health Administration
PROPOSED RULES
Construction safety and health standards:
Steel Erection Negotiated Rulemaking Advisory Committee
Meetings, 56279

Patent and Trademark Office
NOTICES
Meetings:
Dissemination of patent information, 56320–56322

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
PROPOSED RULES
Vaccine injury compensation:
Vaccine injury table revision, 56289–56300

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Southern Nevada Water Authority Treatment and Transmission Facility, 56350–56351

Securities and Exchange Commission
NOTICES
Options price reporting authority, 56380–56381
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 56381
Applications, hearings, determinations, etc.:
Glenbrook Life & Annuity Co. et al., 56381–56384

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 56384
Pipeline facilities on U.S. borders; permit applications:
Portal Pipeline Co., 56384

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Mental Health Services Center National Advisory Council, 56348

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Charter Bancorp, M.H.C., 56388

Transportation Department
See Federal Aviation Administration

Treasury Department
See Thrift Supervision Office
NOTICES
Organization, functions, and authority delegations:
Director, Community Development Financial Institutions Fund, 56388
Director, Office of Procurement, 56386–56388

Veterans Affairs Department
NOTICES
Meetings:
Former Prisoners of War Advisory Committee, 56388–56389

Separate Parts In This Issue

Part II
Department of Agriculture, 56392–56465

Part III
Environmental Protection Agency, 56468–56495

Part IV
Department of Housing and Urban Development, 56498–56501

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
2.....56392
Proposed Rules:
401.....56257
443.....56257
457.....56257

11 CFR
Proposed Rules:
9002.....56268

14 CFR
25.....56223
39.....56224
Proposed Rules:
Ch. I.....56269
39 (3 documents).....56270, 56271, 56274
71 (2 documents).....56276, 56277

16 CFR
259.....56230

18 CFR
Proposed Rules:
Ch. I.....56278

24 CFR
235.....56498

29 CFR
102.....56233
Proposed Rules:
1926.....56279

32 CFR
706.....56237

40 CFR
52 (3 documents).....56238, 56241, 56244
Proposed Rules:
52 (3 documents).....56279, 56280
70 (2 documents).....56281, 56285
260.....56468
261.....56468
262.....56468
263.....56468
264.....56468
265.....56468
270.....56468

41 CFR
101–41.....56246
201–39.....56248

42 CFR
Proposed Rules:
100.....56289

44 CFR
65 (3 documents).....56249, 56251, 56252
67.....56253
Proposed Rules:
67 (2 documents).....56300, 56307

47 CFR
73.....56255
Proposed Rules:
73 (2 documents).....56310

50 CFR
672.....56255

Rules and Regulations

Federal Register
Vol. 60, No. 216
Wednesday, November 8, 1995

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–119, Special Conditions No. 25–ANM–109]

Special Conditions: Bombardier Inc., Canadair Challenger CL–600–2B16 (CL–604 Variant), High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Canadair Challenger CL–600–2B16 (CL–604 Variant) airplane. This airplane will utilize new avionic/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 31, 1995. Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–119, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–119, Comments may be inspected in the Rule Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Gregory L. Dunn, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, (206) 227–2799.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exits for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must be submitted with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–119.'' The postcard will be date stamped and returned to the commenter.

Background

On June 14, 1993, Bombardier Inc., Candor, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, applied to Transport Canada for a type design change to their Type Certificate A21EA in the transport airplane category for the Model CL–600–2B16 (CL–604 Variant) airplane. The CL–604 Variant is a low swept wing, business jet airplane powered by two GE CF 34–3B turbofan engines mounted on pylons extending from the aft fuselage. The airplane has a seating capacity of up to nineteen passengers, and a maximum ramp weight of 48,300 pounds.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Canadair must show, except as provided in § 25.2, that the Model CL–600–2B16 (CL–604 Variant) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–78. In addition, the proposed certification basis for the Model CL–600–2B16 (CL–604 Variant) includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions incorporated herein form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the CL–600–2B16 (CL–604 Variant) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 1128 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel of Unusual Design Features

The Model CL–600–2B16 incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS) and a limited Engine Indication and Crew Alerting System (EICAS). These systems may be

vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for Canadair CL-600–2B16 (CL–604 Variant) which require that new technology electrical and electronic systems, such as the EFIS and EICAS, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of eletromagnetics energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions would be applicable initially to the Model CL–600–2B16 (CL–604 Variant). Should Canadair apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the Federal Register. However, as the certification date for the Bombardier Inc., Canadair Challenger CL–600–2B16 (CL–604 Variant) is imminent, the FAA finds that good cause exists for making these special conditions effective upon issuance.

Conclusion

This action affects certain design features only on the Canadair CL–600–2B16 (CL–604 Variant) airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Bombardier Inc., Canadair Model CL–600–2B16 (CL–604 Variant) airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of this special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–27705 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–ANE–32; Amendment 39–9420; AD 95–22–12]

Airworthiness Directives; Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers, that currently requires initial and repetitive inspections of the propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth for wear, and replacement, if necessary, of PCU servo BIS assemblies. This amendment increases the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, the FAA has reevaluated the optional installation of the Secondary Drive Quill (SDQ), and has added a new compliance end-date of June 30, 1998, for the installation of the SDQ. This AD will also require initial and repetitive torque check inspections of the primary ballscrew quill once the SDQ is installed. This amendment is prompted by field service and laboratory test data that indicate that the repetitive inspection interval can be safely increased, and by the development and availability of the SDQ. The actions specified by this AD are intended to prevent inability to control the propeller

blade angle due to tooth wear in the PCU servo BIS assembly.

DATES: Effective November 24, 1995 as to all compliance paragraphs except paragraph (b) of this AD.

Effective May 6, 1996 as to compliance paragraph (b) of this AD.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1995.

Comments on the requirements of compliance paragraph (b) of this AD for inclusion in the Rules Docket must be received on or before January 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7158, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA recently issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 94–22–12, Amendment 39–9062 (59 FR 55199, November 4, 1994), which is applicable to Hamilton Standard 14RF, 247F, 14SF, and 6/5500/F (formerly Hamilton Standard/British Aerospace 6/5500/F) series propellers. This notice of proposed rulemaking (NPRM) was published in the Federal Register on June 6, 1995 (60 FR 29797). That action proposed to require increasing the repetitive propeller control unit (PCU) servo ballscrew internal spline (BIS) teeth inspection interval from 1,500 to 2,500 hours time in service (TIS) for propellers that have a ballscrew quill damper installed. In addition, that action proposed to add an optional terminating action to the repetitive PCU servo BIS teeth inspections by installing a Secondary Drive Quill (SDQ). With the SDQ installed, that action proposed to require an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter repetitive torque check inspections at intervals not to exceed 5,000 hours TIS since last inspection.

Since issuance of the NPRM, the FAA has been advised by the manufacturer that the logistics (parts, special tools, personnel, shop capability, and aircraft availability), required for the installation of the SDQ for all operators can support installation by June 30, 1998. Based on this factor, the FAA has re-evaluated the installation of the SDQ as an optional requirement, and has changed the compliance section of the AD to provide a requirement that the SDQ must be installed by June 30, 1998. The FAA determined that publication of this compliance end-date in this rule, rather than in a separate rulemaking, will benefit those operators who may wish to install the SDQ at an earlier, more convenient maintenance opportunity than otherwise might have been the case without the notice of the compliance end-date. The FAA recognizes, however, that the compliance end-date is a new requirement, and, therefore, has provided for a comment period and a separate effective date for the compliance end-date provision of this AD. Installation of an SDQ will constitute terminating action for the initial and repetitive inspections required by paragraph (a) of this AD.

The FAA did receive comments on the NPRM and addressees those comments in this rule.

The actions would be required to be accomplished in accordance with the following Hamilton Standard Alert Service Bulletins (ASB's), all dated May 5, 1995: No. 14SF–61–A59, Revision 6; No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; and No. 6/5500/F–61–A11, Revision 6. These ASB's enable affected propellers with a ballscrew quill damper installed in production or in accordance with the following Hamilton Standard Service Bulletins (SB's), all dated September 27, 1994, to extend the repetitive PCU servo BIS teeth inspection interval from 1,500 to 2,500 hours TIS since last inspection: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2.

In addition, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 2, all dated June 22, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33. These SB's describe procedures for installing the SDQ.

Also, the FAA has reviewed and approved the technical contents of the following Hamilton Standard SB's, all Revision 1, dated May 17, 1995; No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–32. These SB's describe procedures for initial and repetitive torque check inspections of the primary ballscrew quill if the SDQ is installed.

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

One commenter (the manufacturer) states that due to an arithmetic error, the total cost impact of the current AD per year on US operators should be estimated to be $138,000, and therefore the approximate yearly savings to US operators would be $55,200 instead of $51,570, a 6.7% increase in savings. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the number of work hours required for installation of the SDQ should be three, as stated in the SB's. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the number of work hours required for accomplishment of the torque check should be 0.25, assuming the spinner and transfer tube are removed, as stated in the SB's. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states the approximate yearly inspection cost should be $6 per propeller per year. The FAA concurs and has revised the economic analysis of this final rule accordingly.

The manufacturer states that the correct SB number referenced in the compliance section should be 6/5500/F–61–32. The FAA concurs and has revised this final rule accordingly.

One commenter presents comments similar to those previously submitted to the FAA concerning AD 92–22–12, which increased the BIS inspection interval from 500 to 1,500 hours TIS. The commenter states that the specific cause of wear has not been identified by the manufacturer and that the modifications proposed in the NPRM do not correct the inherent wear characteristics associated with BIS tooth wear. In addition, all causes for PCU wear should be positively identified

before the inspection interval is increased.

The FAA does not concur. The FAA has reviewed data from numerous tests and investigations and has determined the cause of extreme wear when it occurs on a very small number of splines in service. These tests and investigations have revealed that spline joint wear factors include:

Magnitude and direction of vibratory environment.

How well the spline joint is lubricated.

Motion of elements within the joint due to stack up of clearances.

Thickness of chrome plating on spline teeth.

The FAA has therefore determined that there is no single factor for wear of this complex joint. However, the major contributors to these wear factors are lack of lubrication and axial motion. Laboratory tests and controlled field service data have proven the damper reduces all of these wear factors by over 20 times the rate that was experienced before the damper installation.

The commenter also states that modifications to the PCU should be made so that wear-induced failure cannot cause catastrophic consequences. The FAA concurs and has determined that the addition of the primary quill damper reduces the probability of wear occurring. In addition, installation of the newly designed SDQ assembly hardware provides a redundant load path.

The commenter also states that the field data used to justify the increased inspection interval is being collected from only a small percentage of units in operation. The FAA does not concur. The field data includes a small controlled in-service usage program in addition to many thousands of reports submitted to the FAA for each BIS inspection, as required by AD 94–22–12.

This commenter also questions the criteria for determining the 2,500 hours TIS inspection interval for the BIS. In addition, the commenter finds the 5,000 hours TIS torque check interval to be arbitrary and unfounded, and believes that the torque check should be conducted during routine maintenance actions. The FAA does not concur. The FAA has phased in the inspection intervals for the BIS with the damper installed by intervals of 500, 1,500, and 2,500 hours TIS based on field service reports of a controlled population, continued fleet-wide reports of many thousands of inspections required by AD 94–22–12, and by certification test data that has revealed that installation of the ballscrew damper resulted in a spline life improvement factor of 20 times the original 500 hours TIS inspection interval, thereby justifying by test data at least a 10,000 hours TIS inspection interval for the BIS with the damper installed.

The FAA established torque check intervals for the SDQ based on test data on many test specimens for the equivalent of three times the proposed 5,000 hours TIS torque check interval. The interval of 5,000 hours TIS also coincides with a number of other propeller maintenance activities occurring at that time. The FAA is not mandating the SDQ interval at earlier, opportune times coinciding with routine maintenance, but believes that operators may be able to take advantage of propeller disassembly and conduct the SDQ inspection at that time.

The commenter also states that if the positive torque transmitting capability of the BIS fails and the SDQ becomes operational, the PCU has reverted to a single load path and the redundant feature is no longer available. The FAA concurs that reversion to a single load path would make use of the stated redundancy only after the primary path had failed. However, the torque check is designed to detect failure of the primary path and therefore provides a positive indication that the PCU is utilizing the secondary path and that replacement of the PCU is necessary.

Several commenters state that the AD's required torque checks of the primary ballscrew after an SDQ is installed, in paragraph (d) of the AD, are repetitious of the same torque check requirements found in the Airworthiness Limitations Section of the Manufacturer's Maintenance Manual (MMM). The commenters suggest that the FAA should, therefore, delete paragraph (d) from the AD because it represents a check redundant to one already required. The FAA does not agree. While the FAA views as mandatory the inspections contained in the Airworthiness Section of the MMM, these particular inspections were not part of the MMM at the time of type certification. In order to insure that all operators have constructive notice of the inspections contained in paragraph (d) of the AD, the FAA has determined that it is necessary to publish those requirements in this AD. While changes to the Airworthiness Limitations Section of an MMM normally follow an AD making those changes, the fact that the MMM already contains the inspections of paragraph (d) does not obviate the need to include those requirements in an AD. The MMM, then, merely reflects the inspections not present at the time of type certification and later made mandatory by this AD. Operators do not, of course, have to perform two inspections; one inspection would satisfy both requirements. Therefore, the presence of the same inspection in an AD and in the MMM does not increase the maintenance burden on any operator.

There are approximately 2,506 propellers of the affected design in the worldwide fleet. The FAA estimates that 1,150 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per propeller to accomplish the PCU servo BIS teeth inspections, and that the average labor rate is $60 per work hour. Based on these figures, and on the average utilization rate of 2,000 hours TIS per year equating to 1.33 inspections per year, the total cost impact of the current AD per year on U.S. operators is estimated to be $138,000. However, this superseding AD would require only 0.8 inspections per year, resulting in an approximate yearly inspection cost of $82,800, which would provide an approximate yearly savings to U.S. operators of $55,200.

The terminating action will require 3 work hours to install the SDQ, and required parts will cost approximately $5,500 per propeller. With the SDQ installed, the AD will require initial and repetitive torque check inspections of the primary ballscrew quill. The torque check inspection will take 0.25 work hours to perform the required actions, and with an average utilization rate of 2,000 hours TIS per year equating to 0.4 inspections per year, resulting in an approximate yearly inspection cost of $6 per propeller.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, the requirement to install a Secondary Drive Quill (SDQ) was not preceded by notice and an opportunity for public comment, therefore, comments are specifically invited on the installation requirement described in compliance paragraph (b) of this AD. Interested persons are invited to comment on this requirement of this 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 under the caption **ADDRESSEES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD

action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–ANE–34.'' The postcard will be date stamped and returned to the commenter.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9062 (59 FR 55199, November 4, 1994, and by adding a new airworthiness directive, Amendment 39–9420, to read as follows:

95–22–12 Hamilton Standard: Amendment 39–9420. Docket 95–ANE–32. Supersedes AD 94–22–12, Amendment 39–9062.

Applicability: Hamilton Standard Models 14RF–9, 14RF–19, 14RF–21, and 14RF–23; 247F–1; 14SF–5, 14SF–7, 14SF–11, 14SFL11, 14SF–15, 14SF–17, 14SF–19, 14SF–23; and 6/5500/F propellers installed on but not limited to Embraer EMB–120 and EMB–120RT; SAAB–SCANIA SF340B; Aerospatiale ATR42–100, ATR42–300, ATR42–320, ATR72, ATR72–210; DeHavilland DHC–8–100 series, DHC–8–300; Construcciones Aeronauticas SA (CASA) CN–235 and CN–235–100; Canadair CL215T and CL415; and British Aerospace ATP airplanes.

Note: This airworthiness directive (AD) applies to each propeller 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 propellers 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 (e) to request approval from the Federal Aviation Administration (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 propeller from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to control the propeller blade angle due to tooth wear in the propeller control unit (PCU) servo ballscrew internal spline (BIS) assembly, accomplish the following:

(a) Inspect the PCU servo BIS assembly for tooth wear in accordance with the Accomplishment Instructions of the following Hamilton Standard Alert Service Bulletins (ASB), all dated May 5, 1995, as applicable: No. 14RF–9–61–A53, Revision 7; No. 14RF–19–61–A25, Revision 6; No. 14RF–21–61–A38, Revision 6; No. 247F–61–A3, Revision 5; No. 14SF–61–A59, Revision 6; and No. 6/5500/F–61–A11, Revision 6; as follows:

(1) For a PCU with unknown time in service (TIS), and unknown TIS since the last inspection, on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect within 200 hours TIS after the effective date of this AD.

(2) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and either has not been inspected, or has been inspected more than 500 hours prior to the effective date of this AD, in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD; and that does not have a ballscrew quill damper installed; inspect within 200 hours TIS after the effective date of this AD.

(3) For a PCU with 1,800 or more hours TIS or unknown TIS on the effective date of this AD, and that has been inspected within the previous 500 hours TIS in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD, and that does not have a ballscrew quill damper installed, inspect within 500 hours TIS since the last inspection in accordance with the applicable Hamilton Standard ASB listed in paragraph (a) of this AD.

(4) For a PCU with less than 1,800 hours TIS on the effective date of this AD, and that does not have a ballscrew quill damper installed, inspect prior to accumulating 1,800 hours TIS, or within 300 hours TIS after the effective date of this AD, whichever occurs later.

(5) For a PCU that has a ballscrew quill damper installed in production or in accordance with the following applicable Hamilton Standard Service Bulletins (SB), all dated September 27, 1994, or previous revisions: No. 14SF–61–67, Revision 2; No. 14RF–9–61–61, Revision 1; No. 14RF–19–61–29, Revision 2; No. 14RF–21–61–48, Revision 2; No. 247F–61–6, Revision 2; and No. 6/5500/F–61–19, Revision 2; inspect within 2,500 hours TIS since installation of the ballscrew quill damper.

(6) Thereafter, inspect at intervals described as follows:

(i) For propellers that have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, or previous revisions, inspect at intervals not to exceed 2,500 hours TIS since the last inspection required by this AD.

(ii) For propellers that do not have a ballscrew quill damper installed in production or in accordance with the applicable Hamilton Standard SB listed in paragraph (a)(5) of this AD, inspect at intervals not to exceed 500 hours TIS since the last inspection required by this AD.

(7) If PCU servo BIS teeth are worn beyond the limits specified in the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, prior to further flight, replace the PCU with a serviceable assembly in accordance with the Accomplishment Instructions of the applicable ASB's listed in paragraph (a) of this AD, and thereafter inspect in accordance with paragraphs (a)(5) and (a)(6) of this AD.

(b) Prior to June 30, 1998, install a Secondary Drive Quill (SDQ) in accordance with the Accomplishment Instructions of the following applicable Hamilton Standard SB's, all Revision 1, all dated May 17, 1995: No. 14SF–61–82; No. 14RF–9–61–76; No. 14RF–19–61–43; No. 14RF–21–61–62; No. 247F–61–13; and No. 6/5500/F–61–33.

(c) Installation of an SDQ in accordance with applicable SB's listed in paragraph (b) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a) of this AD.

(d) With an SDQ installed, perform an initial torque check inspection of the primary ballscrew quill at 5,000 hours TIS since installation of the SDQ, and thereafter at intervals not to exceed 5,000 hours TIS since

last inspection, and remove from service and replace with a serviceable part, if necessary, in accordance with the following applicable Hamilton Standard SB's, all Revision 2, dated June 22, 1995: No. 14SF–61–81; No. 14RF–9–61–75; No. 14RF–19–61–41; No. 14RF–21–61–60; No. 247F–61–12; and No. 6/5500/F–61–32.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

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

(g) The actions required by this AD shall be done in accordance with the following Hamilton Standard service documents:

Document No.	Pages	Revision	Date
ASB No. 14SF–61–A59	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	3	March 1, 1994.
	8	2	July 28, 1993.
	9–10	4	April 7, 1994.
	11–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 14RF–9–61–A53	1–6	7	May 5, 1995.
	7	6	December 30, 1994.
	8	3	July 28, 1993.
	9–10	6	December 30, 1994.
	11–12	4	March 1, 1994.
	13	5	April 7, 1994.
	14–20	4	March 1, 1994.
	21	5	April 7, 1994.
Total pages: 21			
ASB No. 14RF–19–61–A25	1–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	2	July 28, 1993.
	9	4	April 7, 1994.
	10	3	March 1, 1994.
	11	4	April 7, 1994.
	12–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 14RF–21–61–A38	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	2	July 28, 1993.
	9–10	4	April 7, 1994.
	11–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
ASB No. 247F–61–A3	1	5	May 5, 1995.
	2	4	December 30, 1994.
	3–6	5	May 5, 1995.
	7	4	March 1, 1994.
	8	1	July 28, 1993.
	9–10	3	April 7, 1994.
	11–19	2	March 1, 1994.
	20	3	April 7, 1994.
Total pages: 20			
ASB No. 6/5500/F–61–A11	1	6	May 5, 1995.
	2	5	December 30, 1994.
	3–6	6	May 5, 1995.
	7	5	December 30, 1994.
	8	3	March 1, 1994.
	9	5	December 30, 1994.
	10–11	4	April 7, 1994.
	12	2	July 28, 1993.
	13	3	March 1, 1994.
	14	2	July 28, 1993.
	15–20	3	March 1, 1994.
	21	4	April 7, 1994.
Total pages: 21			
SB No. 14SF–61–67	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–9	Original	December 9, 1993.
	10	1	May 6, 1994.

Document No.	Pages	Revision	Date
	11	Original	December 9, 1993.
	12	2	September 27, 1994.
	13–15	Original	December 9, 1993.
	16	1	May 6, 1994.
Total pages: 16			
SB No. 14RF–9–61–61	1–2	1	September 27, 1994.
	3–10	Original	December 9, 1993.
	11	1	September 27, 1994.
	12–14	Original	December 9, 1993.
Total pages: 14			
SB No. 14RF–19–61–29	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 14RF–21–61–48	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 247F–61–6	1–4	2	September 27, 1994.
	5–10	Original	December 9, 1993.
	11	2	September 27, 1994.
	12–13	Original	December 9, 1993.
	14	1	May 6, 1994.
Total pages: 14			
SB No. 6/5500/F–61–19	1	2	September 27, 1994.
	2	1	May 6, 1994.
	3–10	Original	December 6, 1993.
	11	2	September 27, 1994.
	12	Original	December 6, 1993.
	13–14	1	May 6, 1994.
Total pages: 14			
SB No. 14SF–61–82	1–36	1	May 17, 1995.
Total pages: 36			
SB No. 14RF–9–61–76	1–33	1	May 17, 1995.
Total pages: 33.			
SB No. 14RF–19–61–43	1–34	1	May 17, 1995.
Total pages: 34			
SB No. 14RF–21–61–62	1–33	1	May 17, 1995.
Total pages: 33			
SB No. 247F–61–13	1–34	1	May 17, 1995.
Total pages: 34			
SB No. 6/5500/F–61–33	1–33	1	May 17, 1995.
Total pages: 33			
SB No. 14SF–61–81	1–12	2	June 22, 1995.
Total pages: 12			
SB No. 14RF–9–61–75	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 14RF–19–61–41	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 14RF–21–61–60	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 247F–61–12	1–10	2	June 22, 1995.
Total pages: 10			
SB No. 6/5500/F–61–32	1–11	2	June 22, 1995.
Total pages: 11			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hamilton Standard, One Hamilton Road, Windsor Locks, CT 06096–1010. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 24, 1995 as to all compliance paragraphs except paragraph (b) of this AD.

(i) This amendment becomes effective on May 6, 1996 as to compliance paragraph (b) of this AD.

Issued in Burlington, Massachusetts, on October 30, 1995.

James C. Jones,

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

[FR Doc. 95–27641 Filed 11–6–95; 10:42 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 259

Guide Concerning Fuel Economy Advertising of New Automobiles

AGENCY: Federal Trade Commission.

ACTION: Final Amendment of the Guide.

SUMMARY: The Federal Trade Commission (FTC) is amending the ''Guide Concerning Fuel Economy Advertising for New Automobiles'' to conform to the Environmental Protection Agency's (EPA) rule regarding fuel economy labeling of new automobiles. In particular, the amendments are intended to conform the Guide to those portions of EPA's rule that now require disclosure of certain fuel economy information, including adjusted city and adjusted highway miles-per-gallon (mpg) numbers, rather than the one ''estimated mpg'' number previously required.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Attorney, or Gerald C. Zeman, Attorney, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, Suite 520–A, Cleveland, Ohio 44114. Telephone (216) 522–4210.

SUPPLEMENTARY INFORMATION:

I. Background

The FTC's ''Guide Concerning Fuel Economy Advertising for New Automobiles'' was first promulgated in 1975.[1] The Guide was issued in response to a dramatic increase in advertising fuel economy claims based on a proliferation of different test procedures. The record of that proceeding showed both the importance of fuel economy to consumers in their automobile purchasing decisions and the need for meaningful fuel economy information based on a standard testing procedure. The original Guide adopted in 1975 by the Commission stated that fuel economy representations in advertising should be accompanied by disclosure of estimated city and highway mpg figures based on EPA test procedures.

In 1978 the FTC Guide was amended to make advertising disclosures consistent with changed EPA requirements for fuel economy labels on new automobiles.[2] At that time, the EPA mandated disclosure of a single number, designated ''estimated mpg,'' and the FTC Guide was amended to require that fuel economy advertising representations be accompanied by disclosure of this figure.

Subsequently, in 1984, the EPA again amended its rule to require that adjusted city and highway mpg estimates, as well as certain other fuel economy information, appear on labels for new automobiles. By Federal Register notice of March 21, 1985 (50 FR 11378) (comment period reopened November 7, 1985, 50 FR 46300), the FTC proposed amendments to conform its Guide to the revised EPA rule. In publishing its request for comments, the Commission stated that because the revised EPA rule was already in effect, automobile manufacturers and dealers could make fuel economy claims consistent with the proposal pending final amendment of the Guide. Thus, the proposal has been in effect informally since its date of original publication. The Commission now takes the final step of formally adopting the changes to its advertising Guide.

II. Public Comments

In the preamble to the 1985 Federal Register notice, the FTC discussed the history of the Guide and the changes in the EPA fuel economy labeling rule which led to the proposed changes in the advertising Guide. The preamble also described the changes to the Guide that the FTC proposed to make based on the changes to the EPA rule and the FTC's own experience with the advertising Guide. Additionally, in the preamble, the FTC requested comments regarding the cost of providing the information, the effect the Guide has on fuel economy advertising, and the utility of the information to consumers.

Comments were received from: the American Automobile Association; CBS, Inc.; the Center for Auto Safety; Dancer Fitzgerald Sample; the Department of Energy; the Environmental Protection Agency; General Motors Corporation; the Leo Burnett Advertising Agency; the National Association of Broadcasters; and the National Automobiles Dealers Association. Three comments were also received from individuals: Arthur and Louise Britton; Ralph Williams; and Walt and Cathy Zimmerman.

A. General Comments

Some comments received from the automobile industry, the broadcasting industry, and one advertising agency either opposed retention of fuel economy disclosure requirements, or proposed that the disclosure requirements be limited to specific circumstances, such as advertisements making quantitative or comparative fuel economy claims. The comments opposing retention contended that the requirements are burdensome, costly, and do not provide useful information to consumers. On the other hand, comments from individuals, public interest groups, the Department of Energy, EPA, and another advertising agency generally favored retention of the disclosure requirements. These comments contended that disclosure of the EPA mpg figures provides consumers with useful comparative fuel economy information, while adding little to advertising costs. One comment contended that elimination of these requirements would precipitate a variety of confusing fuel economy claims.

The FTC continues to believe that disclosure of EPA mpg numbers provides to consumers useful and understandable comparative fuel economy information. (See 40 FR 42003, September 10, 1975.) While there is undoubtedly a cost to providing this information, the FTC believes that the cost is relatively small[3] and is more than offset by the value of the information, which enables consumers to judge the relative fuel economy of comparative automobile models. Moreover, the 1985 proposed amendments to the Guide substantially shortened the disclosures that must accompany advertised EPA estimates, thereby reducing costs. Furthermore, as discussed below, the FTC is allowing certain fuel economy advertisements to disclose only one EPA estimate—either the highway estimate or the city estimate—without simultaneous disclosure of the other number. Thus, advertisers now have both a shorter disclosure requirement and more flexibility when advertising fuel economy of new automobiles than was the case under the previously existing Guide.

B. EPA Estimates

Some commenters contended that both the city and highway estimates should be disclosed in all fuel economy advertisements in order to maintain consistency with the EPA labeling rule. Other comments suggested that disclosure of the EPA estimate should be required only when explicit mileage claims are made.

The FTC has determined to adhere to the 1985 proposal, requiring disclosure of the EPA number corresponding to the claim that is made. For example, if only a highway mileage claim is made in the

[1] 40 FR 42003 (September 10, 1975).

[2] 43 FR 55757 (November 29, 1978).

[3] General Motors was the only commenting party to submit specific cost data. Its figures were disputed by the Center for Auto Safety. Dancer Fitzgerald Sample, an advertising agency, stated that it believed the cost of providing EPA estimates in fuel economy advertising to be minimal.

ad, then only the EPA highway estimate must be disclosed. If a general (i.e., nonspecific) mileage claim is made, only the city estimate must be disclosed. However, if the advertising claim addresses both city and highway driving, then both figures must be disclosed.

The FTC is adopting these disclosure requirements because the current EPA city and highway numbers more accurately predict actual in-use mileage. As a result, the FTC believes that disclosure of the city estimate may not be necessary in advertisements directed *only* to highway driving. Of course, advertisers are always free to disclose both city and highway numbers in their advertising.

Based on the reliability of the EPA city and highway numbers, the FTC's 1985 proposal did not include the lengthy disclosure, required under the previous Guide, warning that the consumer's actual mileage probably will be less and will depend upon factors such as weather conditions and driving speed.

The FTC, however, continues to believe that it is important that the EPA estimate accompany implicit as well as explicit mileage claims. *Any* mileage claim inherently involves a comparison to other vehicles. The EPA estimates provide consumers with a meaningful method of comparing competing claims.

The 1985 proposal, which has been in effect informally during the intervening years, is now time-tested. It appears that the proposal has worked well, and the Commission has not seen evidence of deceptive or misleading claims because of the changed disclosures. Therefore, formal adoption of the proposed Guide is warranted.

C. Non-EPA Test Results

The greatest number of comments addressed use of non-EPA test results. The comments ranged from advocating a prohibition on the use of such test results to espousing elimination of all disclosure of EPA estimates in ads using non-EPA results. Some comments also objected to the specific proposal that would allow the EPA estimates to be disclosed in ''equal prominence'' to the non-EPA results, in the audio portion of broadcast ads, instead of requiring ''greater prominence'' than the non-EPA results.

The FTC believes that if a non-EPA test is advertised, the appropriate EPA estimate should be disclosed with greater prominence, except in audio portions of advertisements. In the prior version of the Guide, the requirement had been that the EPA estimate had to be given before and after the non-EPA estimate in audio broadcast ads. As a result, advertisers had less flexibility in developing broadcast ads than they did print ads. Unlike a printed disclosure, which may not be seen among other textual material unless it is more prominently displayed, however, an audio disclosure of the EPA estimate will be as likely to be heard as the non-EPA estimate. Accordingly, the FTC believes that adopting an ''equal prominence'' provision for audio portions of advertisements will reasonably ensure that the EPA estimates are conveyed to the listener without unduly burdening the advertiser.

List of Subjects in 16 CFR Part 259

Advertising, Fuel economy, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 259 is amended to read as follows:

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.
259.1 Definitions.
259.2 Advertising disclosures.

Authority: 15 U.S.C. 41–58.

§ 259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *New automobile.* Any passenger automobile or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term ''manufacturer'' shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term ''dealer'' shall mean any person, resident or located in the United States or any territory thereof, engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term ''ultimate purchaser'' means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *Estimated city mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the city test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(c) *Estimated highway mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *Vehicle configuration.* The unique combination of automobile features, as defined in 40 CFR 600.002–85(24).

(e) *Estimated in-use fuel economy range.* The estimated range of city and highway fuel economy of the particular new automobile on which the label is affixed, as determined in accordance with procedures employed by the U.S. Environmental Protection Agency as described in 40 CFR 600.311 (for the appropriate model year), and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported or accepted by the U.S. Environment Protection Agency.

(f) *Range of estimated fuel economy values for the class of new automobiles.* The estimated city and highway fuel economy values of the class of automobile (*e.g.*, compact) as determined by the U.S. Environmental Protection Agency pursuant to 40 CFR 600.315 (for the appropriate model year) and expressed in miles-per-gallon, to the nearest whole mile-per-gallon.

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile [1] unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) If the advertisement makes:

(i) Both a city and a highway fuel economy representation, both the

[1] The Commission will regard as an express or implied fuel economy representation one which a reasonable consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

''estimated city mpg'' and the ''estimated highway mpg'' of such new automobile,[2] must be disclosed;

(ii) A representation regarding only city or only highway fuel economy, only the corresponding EPA estimate must be disclosed; [3]

(iii) A general fuel economy claim without reference to either city or highway, or if the representation refers to any combined fuel economy number, the ''estimated city mpg'' must be disclosed; [4] and

(2) That the U.S. Environmental Protection Agency is the source of the ''estimated city mpg'' and ''estimated highway mpg'' and that the numbers are estimates.[5]

(b) If an advertisement for a new automobile cites:

(1) The ''estimated in-use fuel economy range,'' the advertisement must state with equal prominence both the upper and lower number of the range, an explanation of the meaning of the numbers (*i.e.*, city mpg range or highway mpg range or both), and that the U.S. Environmental Protection Agency is the source of the figures.

(2) The ''range of estimated fuel economy values for the class of new automobiles'' as a basis for comparing the fuel economy of two or more automobiles, such comparison must be made to the same type of range (*i.e.*, city or highway).[6]

(c) Fuel economy estimates derived from a non-EPA test may be disclosed provided that:

(1) The advertisement also discloses the ''estimated city mpg'' and/or the ''estimated highway mpg,'' as required by § 259.2(a), and the disclosure required by § 259.2(a), and gives the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s) substantially more prominence than any other estimate; [7] provided, however, for radio and television advertisements in which any other estimate is used only in the audio, equal prominence must be given the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s); [8]

(2) The source of the non-EPA test is clearly and conspicuously identified;

(3) The driving conditions and variables simulated by the test which differ from those used to measure the ''estimated city mpg'' and/or the ''estimated highway mpg,'' and which result in a change in fuel economy, are clearly and conspicuously disclosed.[9] Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(4) The advertisement clearly and conspicuously discloses any distinctions in ''vehicle configuration'' and other equipment affecting mileage performance (*e.g.*, design or equipment differences which distinguish subconfigurations as defined by EPA) between the automobiles tested in the non-EPA test and the EPA tests.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga, New Automobile Mileage Guide, Matter No. P844508

Today, the Commission issues amendments to the Fuel Economy Advertising Guide. I join the Commission in issuing the amended Guide because the amendments are needed to conform the Guide to the Environmental Protection Agency's rules concerning fuel economy and because the amendments otherwise appear to be improvements. The Commission proposed these amendments to the Guide and received comments on them in 1985. Given that the record on which the amendments are based closed a decade ago, I would have preferred, before finalizing the amendments, to reopen the comment period for thirty days to ascertain whether the amendments should be issued as is or should be revised to reflect any new information.[1]

When the proposed amendments were published for comment, the Commission stated that it would not consider advertising that complied with the amendments to violate Section 5 of the FTC Act. It is my understanding that most fuel economy advertising since 1985 has been consistent with the proposed amendments to the Guide. It is also my understanding that fuel economy advertising has become less prevalent since 1985. The decrease in fuel economy advertising may be due to changes in the relative importance that consumers attach to fuel economy information when making a new automobile purchase. In the alternative, fuel economy advertising may have become less prevalent because the standards contained in the amended Guide are overly regulatory and have deterred truthful as well as deceptive advertising. The record supporting the amendments, having closed a decade ago, sheds no light on why fuel economy advertising has decreased during the ensuing years. Given the potential value of truthful fuel economy advertising, it would have been worthwhile to seek public comment again before issuing the amended Guide to ensure that it not only helps to prevent deception but also does not deter truthful advertising.

[FR Doc. 95–27686 Filed 11–7–95; 8:45 am]

BILLING CODE 6750–01–M

[2] For purposes of § 259.2(a), the ''estimated city mpg'' and the ''estimated highway mpg'' must be those applicable to the specific nameplate being advertised. Fuel economy estimates assigned to ''unique nameplates'' (see 40 CFR 600.207–86(a)(2)) apply only to such unique car lines. For example, if a manufacturer has a model named the ''XZA'' that has fuel economy estimates assigned to it and a derivative model named the ''Econo-XZA'' that has separate, higher fuel economy estimates assigned to it, these higher numbers assigned to the ''Econo-XZA'' cannot be used in advertisements for the ''XZA.''

[3] For example, if the representation clearly refers only to highway fuel economy, only the ''estimated highway mpg'' need be disclosed.

[4] Nothing in this section should be construed as prohibiting disclosure of both the city and highway estimates.

[5] The Commission will regard the following as the minimum disclosure necessary to comply with § 259.2(a)(2), regardless of the media in which the advertisement appears: ''EPA estimate(s).''

For television, if the estimated mpg appears in the video, the disclosure must appear in the video; if the estimated mpg is audio, the disclosure must be audio.

[6] For example, an advertisement could not state that ''according to EPA estimates new automobiles in this class get as little as X mpg (citing a figure from the city range) while EPA estimates that this automobile gets X + mpg (citing the EPA highway estimates or a number from the EPA estimated in-use fuel economy highway range for the automobile).

[7] The Commission will regard the following as constituting ''substantially more prominence:''

For television only: If the estimated city and/or highway mpg and any other mileage estimate(s) appear only in the visual portion, the estimated city and/or highway mpg must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the estimated city and highway mpg appear in the audio portion, visual broadcast of any other estimate must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the estimated city and/or highway mpg. Each visual estimated city and highway mpg must be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

For print only: The estimated city and/or highway mpg must appear in clearly legible type at least twice as large as that used for any other estimate. Alternatively, if the estimated city and highway mpg appear in type of the same size as such other estimate, they must be clearly legible and conspicuously circled. The estimated city and highway mpg must appear against a solid color, contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

[8] The Commission will regard the following as constituting equal prominence. For radio and television when any other estimate is used in the audio: The estimated city and/or highway mpg must be stated, either before or after each disclosure of such other estimate at least as audibly as such other estimate.

[9] For dynamometer tests any difference between the EPA and non-EPA tests must be disclosed. For in-use tests, the Commission realizes that it is impossible to duplicate the EPA test conditions, and that in-use tests may be designed to simulate a particular driving situation. It must be clear from the context of the advertisement what driving situation is being simulated (*e.g.*, cold weather driving, highway driving, heavy load conditions). Furthermore, any driving or vehicle condition must be disclosed if it is significantly different from that which an appreciable number of consumers (whose driving condition is being simulated) would expect to encounter.

[1] Reopening the comment period would have been consistent with the Commission's ongoing regulatory review program under which its rules and guides are reviewed at least once every ten years.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: The National Labor Relations Board is revising in several respects its rules that govern filing and service of papers. The principal revisions include permitting parties to file unfair labor practice charges, petitions in representation proceedings, and objections to elections by facsimile transmission, to permit the Board to serve certain documents by regular mail, rather than by other more expensive means, and generally to reorganize and modify certain portions of the rules pertaining to filing and service. The revisions are being adopted in order to expand the use of facsimile technology to the service of charges, representation petitions, and election objections, to reduce the cost to the agency of the prior requirements that certain documents be served by certified or registered mail, and to update certain other procedural aspects of the filing and service requirements. The intended effect of the revisions is to permit parties and the Board to take greater advantage of facsimile technology, to reduce the cost of serving certain documents, and to update the rules in other respects.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Acting Executive Secretary, 1099 14th Street, N.W., Room 11602, Washington, D.C. 20570–0001; Telephone: (202) 273–1934.

SUPPLEMENTARY INFORMATION: In 1990, the National Labor Relations Board recognized that the use of facsimile systems was becoming more prevalent in both the private and public sectors by modifying § 102.114 of its rules to permit certain documents to be served by facsimile transmission. The Board's approach at that time was to move cautiously into this new technological arena, taking into account the limited number of facsimile machines then available throughout the Agency. Thus, the rule permitted facsimile transmissions of requests for extensions of time, prohibited facsimile transmissions of most other formal documents, and permitted facsimile transmissions of all other documents subject to advance approval, in each instance, by the receiving office. At that time, the Board contemplated that the subject of facsimile transmissions would be revisited periodically and reevaluated based on experience, technological improvements, and current costs.

Having had several years of experience under this rule, the Board now has determined that it would be appropriate to permit unfair labor practice charges, petitions in representation proceedings, and objections to elections to be filed by facsimile transmission. These documents tend to be short, usually only one or a few pages in length, so their permitted transmission would not interfere with the Agency's use of its machines for its own purposes. Moreover, filing of unfair labor practice charges sometimes is time-sensitive, particularly in statutory priority cases since a Region needs to have a charge before it can begin its investigation. Modifying the rules to permit these three types of documents to be filed by facsimile transmission will have the salutary effect of according parties faster means of access to the Board's processes.

Additionally, the Board recently has been studying means by which it can reduce the cost of the services it renders without reducing the quality of those services. One means of accomplishing this objective is to utilize regular mail, rather than certified or registered mail, in appropriate circumstances. Sending a piece of correspondence by certified mail costs $1.00 in addition to the regular first class postage. The U.S. Postal Service charges $1.10 for a return receipt in addition to the certified and first class postage costs. In Fiscal Year 1992 the Agency spent approximately $321,304 for the use of certified mail, of which approximately $145,546 was attributable to return receipt expenses. In an era of diminishing resources, a reduction in these costs was quickly identified as a goal to be pursued.

The National Labor Relations Act, 29 U.S.C. 161(4), provides that:

> Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

This section of the Act never has been understood to require that every piece of paper that the Board issues be served by one of these methods. Nevertheless, under the Board's present rules certain documents, such as unfair labor practice charges, traditionally have been served by certified mail even though the statute does not require it. The new rules change this by more clearly delineating the circumstances under which various formal or informal methods of service are to be utilized.

In drawing distinctions between the types of documents required to be served by the formal methods required by the statute and documents that may be served by less formal methods, the Board has been guided by the dictates of due process. Accordingly, the rules will continue to require use of the statutorily prescribed methods to serve: complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, upon all parties (§ 102.113(a)); final orders of the Board in unfair labor practice cases, and administrative law judges' decisions, upon all parties (§ 102.113(b)); and subpoenas upon the recipient (§ 102.113(c)). All other documents, including unfair labor practice charges (see § 102.14), may be served by other methods, including regular mail (§ 102.113(d)).

Finally, during the course of preparing the foregoing revisions, the Board identified several other areas in which the filing and service requirements should be updated. These are discussed under the specific sections in which the changes are included.

Section 102.14, dealing with service of unfair labor practice charges, is being divided into three subsections. New § 102.14(a) continues, without change, the requirement that it is the responsibility of the charging party to timely serve a copy of the charge upon the person against whom the charge is made. To this provision is added a sentence detailing the means by which a charge can be served. This provision, formerly contained in § 102.114(a), is moved here in an effort to keep provisions relating to the service of charges in a single section. At the same time, the means by which a charge may be served are expanded to include regular mail and, with the permission of the charged party, facsimile transmission or any other means.

New § 102.14(b) is taken from the second sentence in former § 102.14. That provision is modified to make perfectly clear that service of a copy of the unfair labor practice charge by the Regional Director is a matter of courtesy, rather than of right, and to add a provision allowing the Regional Director to serve this copy of the charge by facsimile transmission.

New § 102.14(c) incorporates provisions from § 102.112 with respect to the date of service of a document. Like the new § 102.112, this provision addresses the use of private delivery

services or facsimile transmission, as well as personal service or service by mail.

Section 102.112, dealing with dates of service and dates of filing, is modified to include references to service by private delivery service or facsimile transmission. When documents are served by private delivery service the date of service is, like with the use of United States mail, the date of deposit with the delivery service. When service is by facsimile transmission, the date of service is the date on which the transmission is received.

Section 102.113 is modified in several respects. Former § 102.113(a) is divided into five parts, renumbered as §§ 102.113(a) through 102.113(e). The new §§ 102.113(a) through 102.113(d) demarcate the situations in which service is or is not required to be made by registered or certified mail, telegraph, or personal service. While the former § 102.113(a) set forth the means by which the Agency would serve unfair labor practice charges, that provision now has been moved to § 102.14, where other provisions relating to service of unfair labor practice charges were and still are contained. Further, as noted above, that provision is modified so that unfair labor practice charges may be served by various means, including regular mail.

The new § 102.113(e) carries forward provisions formerly contained in § 102.113(a) relating to methods for proving service. In addition, this new subsection now makes clear that these methods are not exclusive, and that ''any sufficient proof may be relied upon to establish service.''

The new § 102.113(f) carries forward the provisions of former § 102.113(b) regarding service by the Agency upon the attorneys or other representatives of a party. The language is revised to make clear that service by the Board on such attorneys or other representatives ''may be accomplished by any means of service permitted by these rules, including regular mail.''

Section 102.114 is modified in several respects. Subsection 102.114(a) is modified to delete the provision for other means of service provided for ''in a civil action by the law of the State . . .'' In its place, the new rule provides for service by regular mail or private delivery service and, with the permission of the person receiving the service, any other means including facsimile transmission. With regard to the methods of service when filing is done by hand, the new rule omits the provision that service be by mail or telegraph and substitutes a requirement that service be by a means that would ensure receipt by the next business day. Finally, the new rule makes clear that once a complaint issues the General Counsel, as a party to the proceeding, is subject to the same service requirements as any other party, except to the extent that §§ 102.113(a) and 102.113(c) provide otherwise. As noted under the discussion of § 102.113, above, the Agency is required, in certain circumstances, to utilize more formal means of service than is permitted for other parties.

The new § 102.114(b) carries forward provisions from the former § 102.114(a) with respect to means for proving service, modified in light of changes in the methods of service that are permitted under the new rules. In addition, this new subsection now makes clear that these methods are not exclusive, and that ''any sufficient proof may be relied upon to establish service.''

The new § 102.114(c) was formerly part of § 102.114(a). It is now moved to its own subsection, but without any substantive changes.

Former §§ 102.114(b) and 102.114(c) are renumbered to become new §§ 102.114(d) and 102.114(e), respectively. They are not changed in any other respect.

Former § 102.114(d) is renumbered to become new § 102.114(f). This subsection is amended to provide that unfair labor practice charges, petitions in representation cases, and objections to elections may be filed by facsimile transmission as a matter of right. Formerly, facsimile filings of these documents were prohibited. The section further provides that filing of these documents by facsimile is effective on the date of receipt by the agency. Finally, a provision is added admonishing persons attempting to file by facsimile transmission that a ''failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.''

Former § 102.114(e) is renumbered to become new § 102.114(g). This subsection is amended to delete the current prohibition on filing unfair labor practice charges, representation petitions, or objections to elections by facsimile transmission.

Former § 102.114(f) is renumbered to become new § 102.114(h). This subsection is amended to conform to the new provisions in § 102.114(a) under which parties may, under certain circumstances, refuse to accept facsimile transmissions.

Further changes related to the filing by facsimile of charges, representation petitions, and election objections are being made to §§ 102.11, 102.60, and 102.69. These sections currently require that unfair labor practice charges, representation petitions, and election objections, respectively, must be in writing and signed, and that an original and four copies be filed (five copies in the case of election objections under § 102.69). These sections are being modified so that when someone files an unfair labor practice charge, a representation petition, or election objections by facsimile transmission, they ''shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.'' The extra copies, still required when filing is accomplished by other means, need not be filed when filing is by facsimile transmission. Sections 102.11 and 102.60 also are being amended to delete the general reference to declarations made ''under the penalties of the Criminal Code,'' and to substitute therefor a specific reference to declarations pursuant to 28 U.S.C. 1746.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 continues to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.11 is revised to read as follows:

§ 102.11 Forms; jurat; or declaration.

Such charges shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury that its contents are true and correct (see 28

U.S.C. 1746). An original and four copies of such charge shall be filed together with one copy for each additional charged party named. A party filing a charge by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f).

3. Section 102.14 is revised to read as follows:

§ 102.14 Service of charge.

(a) *Charging party's obligation to serve; methods of service.* Upon the filing of a charge, the charging party shall be responsible for the timely and proper service of a copy thereof upon the person against whom such charge is made. Service may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the charge, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Service as courtesy by Regional Director.* The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made. Such charges may, with the permission of the person receiving the charge, be served by the Regional Director by facsimile transmission. In this event the receipt printed upon the Agency's copy by the Agency's own facsimile machine, showing the phone number to which the charge was transmitted and the date and time of receipt shall be proof of service of the same. However, whether serving by facsimile, by regular mail, or otherwise, the Regional Director shall not be deemed to assume responsibility for such service.

(c) *Date of service of charge.* In the case of service of a charge by mail or private delivery service, the date of service is the date of deposit with the post office or other carrier. In the case of service by other methods, including hand delivery or facsimile transmission, the date of service is the date of receipt.

4. In § 102.60, paragraph (a) is revised to read as follows:

§ 102.60 Petitions.

(a) *Petition for certification or decertification; who may file; where to file; withdrawal.* A petition for investigation of a question concerning representation of employees under paragraphs (1)(A)(i) and (1)(B) of section 9(c) of the Act (hereinafter called a petition for certification) may be filed by an employee or group of employees or any individual or labor organization acting in their behalf or by an employer. A petition under paragraph (1)(A)(ii) of section 9(c) of the Act, alleging that the individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative (hereinafter called a petition for decertification), may be filed by any employee or group of employees or any individual or labor organization acting in their behalf. Petitions under this section shall be in writing and signed, and either shall be sworn to before a notary public, Board agent, or other person duly authorized by law to administer oaths and take acknowledgments or shall contain a declaration by the person signing it, under the penalty of perjury, that its contents are true and correct (see 28 U.S.C. 1746). An original and four copies of the petition shall be filed. A person filing a petition by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). Except as provided in § 102.72, such petitions shall be filed with the Regional Director for the Region wherein the bargaining unit exists, or, if the bargaining unit exists in two or more Regions, with the Regional Director for any of such Regions. Prior to the transfer of the case to the Board, pursuant to § 102.67, the petition may be withdrawn only with the consent of the Regional Director with whom such petition was filed. After the transfer of the case to the Board, the petition may be withdrawn only with the consent of the Board. Whenever the Regional Director or the Board, as the case may be, approves the withdrawal of any petition, the case shall be closed.

* * * * *

5. In § 102.69, paragraph (a) is revised to read as follows:

§ 102.69 Election procedure; tally of ballots; objections; certification by the regional director; report on challenged ballots; report on objections; exceptions; action of the Board; hearing.

(a) Unless otherwise directed by the Board, all elections shall be conducted under the supervision of the Regional Director in whose Region the proceeding is pending. All elections shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, either participant may, upon its prompt request to and approval thereof by the Regional Director, whose decision shall be final, have its name removed from the ballot: *Provided, however,* That in a proceeding involving an employer-filed petition or a petition for decertification the labor organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving timely notice in writing to all parties and the Regional Director, disclaiming any representation interest among the employees in the unit. Any party may be represented by observers of its own selection, subject to such limitations as the Regional Director may prescribe. Any party and Board agents may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded. Upon the conclusion of the election the ballots will be counted and a tally of ballots prepared and immediately made available to the parties. Within 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. A person filing objections by facsimile pursuant to § 102.114(f) shall also file an original for the Agency's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. In addition, extra copies need not be filed if the filing is by facsimile pursuant to § 102.114(f). The Regional Director will cause a copy of the objections to be served on each of the other parties to the proceeding. Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

* * * * *

6. Section 102.112 is revised to read as follows:

§ 102.112 Date of service; date of filing.

The date of service shall be the day when the matter served is deposited in the United States mail, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service, or is delivered in person, as the case may be. Where service is made by facsimile transmission, the date of service shall be the date on which

transmission is received. The date of filing shall be the day when the matter is required to be received by the Board as provided by § 102.111.

7. Section 102.113 is revised to read as follows:

§ 102.113 Methods of service of process and papers by the Agency; proof of service.

(a) *Service of complaints and compliance specifications.* Complaints and accompanying notices of hearing, compliance specifications, and amendments to either complaints or to compliance specifications, shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(b) *Service of final orders and decisions.* Final orders of the Board in unfair labor practice cases and administrative law judges' decisions shall be served upon all parties either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(c) *Service of subpoenas.* Subpoenas shall be served upon the recipient either personally or by registered or certified mail or by telegraph, or by leaving a copy thereof at the principal office or place of business of the person required to be served.

(d) *Service of other documents.* Other documents may be served by the Agency by any of the foregoing methods as well as regular mail or private delivery service. Such other documents may be served by facsimile transmission with the permission of the person receiving the document.

(e) *Proof of service.* In the case of personal service, or delivery to a principal office or place of business, the verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same. In the case of service by mail or telegraph, the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed shall be proof of service of the same. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(f) *Service upon representatives of parties.* Whenever these rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If a party is represented by more than one attorney or representative, service upon any one of such persons in addition to the party shall satisfy this requirement. Service by the Board or its agents of any documents upon any such attorney or other representative may be accomplished by any means of service permitted by these rules, including regular mail.

8. Section 102.114 is revised to read as follows:

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service.

(a) Service of papers by a party on other parties may be made personally, or by registered mail, certified mail, regular mail, or private delivery service. Service of papers by a party on other parties by any other means, including facsimile transmission, is permitted only with the consent of the party being served. Unless otherwise specified elsewhere in these rules, service on all parties shall be made in the same manner as that utilized in filing the paper with the Board, or in a more expeditious manner; however, when filing with the Board is done by hand, the other parties shall be promptly notified of such action by telephone, followed by service of a copy in a manner designed to insure receipt by them by the close of the next business day. The provisions of this section apply to the General Counsel after a complaint has issued, just as they do to any other party, except to the extent that the provisions of §§ 102.113(a) or 102.113(c) provide otherwise.

(b) When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made by a private delivery service, the receipt from that service showing delivery shall be proof of service. However, these methods of proof of service are not exclusive; any sufficient proof may be relied upon to establish service.

(c) Failure to comply with the requirements of this section relating to timeliness of service on other parties shall be a basis for either:

(1) A rejection of the document; or

(2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

(d) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8½ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Agency's discretion, be rejected.

(e) The person or party serving the papers or process on other parties in conformance with § 102.113 and paragraph (a) of this section shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in paragraph (a) of this section shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(f) Unfair labor practice charges, petitions in representation proceedings, objections to elections, and requests for extensions of time for filing documents will be accepted by the Agency if transmitted to the facsimile machine of the appropriate office. Other documents, except those specifically prohibited in paragraph (g) of this section, will be accepted by the Agency if transmitted to the facsimile machine of the office designated to receive them only with advance permission from the receiving office which may be obtained by telephone. Advance permission must be obtained for each such filing. At the discretion of the receiving office, the person submitting a document by facsimile may be required simultaneously to serve the original and any required copies on the office by overnight delivery service. When filing a charge, a petition in a representation proceeding, or election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason.

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for

Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

(h) Documents and other papers filed through facsimile transmission shall be served on all parties in the same way as used to serve the office where filed, or in a more expeditious manner, in conformance with paragraph (a) of this section. Thus, facsimile transmission shall be used for this purpose whenever possible. When a party cannot be served by this method, or chooses not to accept service by facsimile as provided for in paragraph (a) of this section, the party shall be notified personally or by telephone of the substance of the transmitted document and a copy of the document shall be served by personal service or overnight delivery service.

Dated, Washington, DC, November 2, 1995.

By direction of the Board.

John J. Toner,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 95–27627 Filed 11–7–95; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: 24 July 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400. Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the following entry as set forth below:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS JOHN S. McCAIN	DDG 56	X	X	X	19.6

Dated: July 24, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–27483 Filed 11–7–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL113–1–6760a; FRL–5324–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On May 5, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for lithographic printing operations as part of the State's 15 percent (%) Reasonable Further Progress (RFP) plan control measures for Volatile Organic Matter (VOM) emissions. VOM, as defined by the State of Illinois, is identical to ''volatile organic compounds'' (VOC), as defined by USEPA. VOC is one of the air pollutants which combine on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. RFP plans are intended to bring areas which have been exceeding the public health based Federal ozone air quality standard closer toward the goal of reaching and maintaining attainment with this standard. The control measures specified in this lithographic printing parts SIP revision are expected by Illinois to reduce VOC (VOM) emissions by 4.05 tons per day in the Chicago area. No reductions are expected in the Metro-East (East St. Louis) area because there are no sources large enough to satisfy the applicability criteria.

DATES: The ''direct final'' approval is effective on January 8, 1996, unless USEPA receives adverse or critical comments by December 8, 1995. If the effective date is delayed, EPA will publish timely notice in the Federal Register.

ADDRESSES: Copies of the revision request and USEPA's analysis (Technical Support Document) are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman at (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires all moderate and above ozone nonattainment areas to achieve a 15 percent reduction of 1990 emissions of volatile organic material by 1996. In Illinois, the Chicago area is classified as ''Severe'' nonattainment for ozone, while the Metro-East area is classified as ''Moderate'' nonattainment. As such, these areas are subject to the 15 percent Rate of Progress (RFP) requirement.

The Illinois Environmental Protection Agency (IEPA) held public hearings on the proposed Lithographic printing rules on December 15, 1994, and January 9, 1995, and on April 20, 1995, the Board adopted a Final Opinion and Order for the proposed amendments. The rules became effective on May 9, 1995, and they were published in the Illinois Register on May 19, 1995. The IEPA formally submitted the Lithographic Printing rules to USEPA on May 5, 1995, and May 31, 1995, as a revision to the Illinois SIP for ozone. In doing so, IEPA believes that these control measures will reduce VOM emissions to help meet the 15% RFP requirement. The submittal amends 35 Ill. Adm. Code Parts 211, 218 and 219, to include control measures for lithographic printing.

The submittal includes the following new or revised rules:

Part 211: Definitions and General Provisions

Subpart B: Definitions

211.474 Alcohol
211.560 As-Applied Fountain Solution
211.2850 Heatset Web Offset Lithographic Printing Line
211.4065 Non-Heatset
211.5980 Sheet-Fed

Part 218: Organic Material Emission Standards and Limitations for the Chicago Area

Subpart H: Printing and Publishing

218.405 Lithographic Printing: Applicability
218.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996
218.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996
218.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996
218.409 Testing for Lithographic Printing On and After March 15, 1996
218.410 Monitoring Requirements for Lithographic Printing
218.411 Recordkeeping and Reporting for Lithographic Printing

Part 219: Organic Material Emission Standards and Limitations for the Metro East Area

Subpart H: Printing and Publishing

219.405 Lithographic Printing: Applicability
219.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996
219.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996
219.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996
219.409 Testing for Lithographic Printing On and After March 15, 1996
219.410 Monitoring Requirements for Lithographic Printing
219.411 Recordkeeping and Reporting for Lithographic Printing

The lithographic printing rules contained in Part 218 are identical to those in Part 219 except for the areas of applicability. Part 218 applies to the Chicago Area, while Part 219 applies to the Metro East Area. The following is a description of the State rules.

Applicability (218/219.405)

Section 218/219.405 states that sources with heatset web offset lithographic printing lines are subject to the requirements of 218/219.406 until March 15, 1996, and Sections 218/219.407 through 218/219.411 on and after March 15, 1996. All such sources are subject unless total maximum theoretical emissions of VOM never exceed 100 tons per calendar year before the application of controls, or Federally enforceable permit conditions limit production such that emissions are less than 100 tons per year.

This rule also states that all heatset web offset, non-heatset web offset, and sheet-fed offset lithographic printing lines will be subject to Sections 218/219.407 through 218/219.411 on and

after March 15, 1996, unless VOM emissions from all lines at a source never exceed 100 pounds per day before the application of controls.

Exempt sources are subject to recordkeeping requirements of Section 418.406 before March 15, 1996, and Section 418.411 on and after March 15, 1996.

Provisions Which Apply Before March 15, 1996 (218/219.406)

Section 218/219.406 contains provisions which apply to Heatset Web Offset Lithographic Printing Prior to March 15, 1996. This section requires heatset web offset printing lines to install and operate afterburner systems that reduce 90 percent of the VOM emissions (excluding methane and ethane) from the dryer exhaust. Alternatively, a condensation recovery system that removes at least 75 percent of the non-isopropyl alcohol organic materials from the dryer exhaust may be used if the fountain solution contains no more than 8 percent, by weight, of VOM, and the control device is equipped with monitoring equipment. This section also contains an equation for calculating total maximum theoretical emissions of VOM from heatset web offset lithographic printing lines.

This section also includes recordkeeping requirements for exempt sources before March 31, 1996. Such sources must record the VOM content and the volume of each fountain solution and ink as applied each year on each printing line. Non-exempt sources are required to keep daily records of the VOM content of the fountain solution, as well as information on operation and maintenance of the control device.

Emission Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996 (218/219.407)

This rule requires heatset web offset lithographic printers to limit the VOM content in the as-applied fountain solution to 1.6 percent by volume. Alternately, the VOM content may be up to 3 percent by volume if the fountain solution is maintained below 15.6°C (60°F), or 5 percent by volume if the fountain solution contains no alcohol. There are also requirements that the air pressure in the dryer be maintained lower than that of the press room, and that an afterburner (or other equivalent control device if approved by the State and USEPA) be installed and operated so that VOM emissions (excluding methane and ethane) from the press dryer exhaust are reduced by 90 percent.

Non-heatset web offset lithographic printers must limit the VOM content in the as-applied fountain solution to 5 percent or less, and the solution must contain no alcohol.

Sheet-fed offset lithographic printing lines are required to limit the VOM content of the as-applied fountain solution to 5 percent or less by volume, or 8.5 percent if the temperature of the fountain solution is maintained below 15.6°C (60°F).

The cleaning solution used on any lithographic printing line must have a VOM content of no more than 30 percent by weight, or alternatively, the VOM composite partial vapor pressure of the as-used cleaning solution must be less than 10 millimeters of mercury at 20°C (68°C). Cleaning materials, including used towels must be kept in closed containers.

Compliance Schedule for Lithographic Printing On and After March 15, 1996 (218/219.408)

This section requires lithographic printing lines to comply with other applicable sections of the lithographic printing rules after March 15, 1996.

Testing for Lithographic Printing On and After March 15, 1996 (218/219.409)

This section sets the test methods to be used in determining compliance. Method 1 and 1A are to be used, as appropriate, to select sampling sites, Methods 2, 2A, 2C, and 2D are to be used to determine volumetric flow rates of exhaust streams, and Methods 25 and 25A are to be used to determine the VOM concentrations of the exhaust streams. An air flow direction indicating device, such as a smoke stick, is to be used to demonstrate 100 percent emissions capture efficiency for the dryer. The applicable test methods and procedures contained in sections 218/219.105 and 218/219.110 are also to be used in determining compliance.

Monitoring Requirements for Lithographic Printing (218/219.410)

This section requires fountain solution temperature monitors for lithographic printing lines which rely on temperature to demonstrate compliance. Also, each batch of as-applied fountain solution must be sampled and tested for compliance with the VOM content limit using a refractometer or hydrometer. A conductivity meter may also be used if it is demonstrated that a refractometer and hydrometer can not be used to determine compliance. For heatset web offset lithographic printing lines, this section requires temperature monitors on afterburners.

This section also requires that automatic cleaning solution mixing equipment be properly maintained and set so that the VOM content of the as-applied cleaning solution is in compliance with the limit in 218/219.407. There are recordkeeping requirements for cleaning solutions which are not prepared with automatic feed equipment, and for cleaning solutions which are to comply using vapor pressure.

Recordkeeping and Reporting for Lithographic Printing (218/219.411)

This section contains recordkeeping requirements for both exempt and non-exempt sources. Exempt sources must record the name, identification, VOM content, and volume of each fountain solution additive, lithographic ink, and cleaning solvent used on any lithographic printing line each month. Exempt sources are also required to record whether a line was in operation each day, and total monthly VOM emissions.

Lithographic printing lines which are subject to control requirements must keep logs detailing monitoring data, operating time, maintenance for the afterburner or other control device. Such sources must record the name, identification, date and time of preparation, volume, and VOM content for each batch of fountain solution. The rule also requires sources to record the name, identification, VOM content of each cleaning solvent, proportion of each cleaning solvent and water, and as-applied VOM content for each batch of cleaning solution. If the source relies on vapor pressure to show compliance, records of the molecular weight, density, and VOM composite partial vapor pressure of each cleaning solvent must also be kept. All records must be maintained at the source for a minimum of 3 years.

II. Analysis of State Submittal

The limits in the Illinois rule match those discussed in the September 1993, draft Control Technology Guideline and/or the June 1994, Alternative Control Techniques Document for offset lithographic printing.

The Illinois rules apply control requirements to sources with total theoretical emissions of more than 100 tons per year or actual emissions of more than 100 pounds per day. In addition, sections 218/219.411(a)(1)(B)(I) state that the actual daily emissions are to be determined by dividing monthly emissions by the number of days in the month. Because of this monthly averaging provision, the cutoff is effectively 3000 pounds per

month of actual emissions. For sources for which a CTG has not been issued, the statutory requirements are that RACT be applied to major stationary sources in moderate and worse ozone nonattainment areas. The USEPA believes that the cutoffs in the Illinois rules will ensure that the rules apply to major stationary sources (sources with the potential to emit 25 tons per year or more), therefore Illinois' cutoffs are acceptable.

III. Final Rulemaking Action

The USEPA has undertaken its analysis of the SIP revision request based on a review of the materials presented by IEPA and has determined that this SIP revision request is approvable.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on January 8, 1996, unless USEPA receives adverse or critical comments by December 8, 1995. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on January 8, 1996.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator, Office of Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds.

Dated: October 11, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows: Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(117) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(117) On May 31, 1995, the State submitted amended lithographic printing rules which consisted of revised definitions, and revisions to the Ozone Control Plan for the Chicago and Metro-East St. Louis areas.

(i) Incorporation by reference.

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.474 Alcohol, 211.560 As-Applied Fountain Solution, 211.2850 Heatset Web Offset Lithographic Printing Line, 211.4065 Non-Heatset, 211.5980 Sheet-Fed added at 19 Ill. Reg. 6823, effective May 9, 1995.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart H; Printing and Publishing, Sections 218.405 Lithographic Printing: Applicability, 218.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996, 218.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996, 218.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996, 218.409 Testing for Lithographic Printing On and After March 15, 1996, 218.410 Monitoring Requirements for Lithographic Printing, 218.411 Recordkeeping and Reporting for Lithographic Printing added at 19 Ill. Reg. 6848, effective May 9, 1995.

(C) Part 219: Organic Material Emissions Standards and Limitations for the Metro-East Area, Subpart H; Printing and Publishing, Sections 219.405 Lithographic Printing: Applicability, 219.406 Provisions Applying to Heatset Web Offset Lithographic Printing Prior to March 15, 1996, 219.407 Emissions Limitations and Control Requirements for Lithographic Printing Lines On and After March 15, 1996, 219.408 Compliance Schedule for Lithographic Printing on and After March 15, 1996, 219.409 Testing for Lithographic Printing On and After March 15, 1996, 219.410 Monitoring Requirements for Lithographic Printing, 219.411 Recordkeeping and Reporting for Lithographic Printing added at 19 Ill. Reg. 6848, effective May 9, 1995.

[FR Doc. 95–27609 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–27–1–7208a; FRL–5322–6]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves a revision to the New Mexico State Implementation Plan (SIP) for the Albuquerque/Bernalillo County nonattainment area that contains transportation conformity rules. The transportation conformity SIP revision enables the Albuquerque/Bernalillo County Air Quality Control Board to implement and enforce the Federal transportation conformity requirements at the local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The final approval action is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate document. The EPA is approving this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the approval action and other information are provided in this document.

DATES: This action is effective on January 8, 1996, unless notice is postmarked by December 8, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the CAA amendments of 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to a SIP. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR Part 51 Subpart T - Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. All other Federal actions (actions other than those under Title 23 U.S.C. or the Federal Transit Act) were addressed in a separate Federal Register notice. The conformity rules require the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994. This notice does not address the conformity requirements of general Federal actions (40 CFR Part 51 Subpart W), and EPA will take action on these SIPs in a separate notice.

II. Evaluation of State's Submission

In response to the Federal Register notice of November 24, 1993, the Governor of New Mexico submitted a SIP revision which included the transportation conformity rules adopted by the Albuquerque/Bernalillo County Air Quality Control Board. Currently, the Albuquerque/Bernalillo area is a nonattainment for carbon monoxide and has requested redesignation to attainment; however, the transportation conformity SIP revision is applicable to all nonattainment and maintenance classifications under the CAA. It must be noted that the final transportation conformity rule requires that the majority of the Federal rules be incorporated in verbatim form with a few exceptions, however, the State rules can not be more stringent than the Federal rules. The consultation section of the rule (40 CFR 51.402) is among these exceptions and the State and local (where applicable) air quality agencies are required to develop their own consultation rules. The following paragraphs present EPA's review and evaluation of the Albuquerque/Bernalillo County nonattainment area SIP revision.

A. Development of Consultation Rules

The Federal rules require the SIP's to include processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts in accordance with the criteria set forth in 40 CFR Part 51 Section 51.402. Specifically, to implement the requirements of Section 51.402, the SIP revisions must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State Department of Transportation, and the U.S. Department of Transportation (USDOT) with State and local air quality agencies and EPA before making conformity determinations, and by State and local air quality agencies and EPA with MPO's, State Departments of Transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, Albuquerque/Bernalillo County, the Albuquerque Environmental Health Department (air agency), established an ad hoc multi-agency committee which included representatives from the State air quality agency, State DOT, USDOT, MPO's, EPA, the local air quality agency, local transportation agencies, and local transit operators. The Albuquerque Environmental Health Department served as the lead agency in coordinating the multi-agency efforts for developing the consultation rules. The committee met approximately on a biweekly basis and drafted consultation rules by using the requirements of 40 CFR 51.402 and 23 CFR 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the Albuquerque/Bernalillo County nonattainment area. The Albuquerque/Bernalillo County SIP revision has adequately addressed all provisions of 40 CFR 51.402 and has met the EPA SIP requirements.

B. Transition From the Interim Period to the Control Strategy Period; 40 CFR 51.448

The EPA promulgated an interim final rule on February 8, 1995, that amended certain provisions of 40 CFR 51.448 in the Federal transportation conformity rules. The interim final rule aligned the timing of certain transportation conformity consequences with the imposition of the CAA highway sanctions for a six-month period. The amendment delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete control strategy implementation plan. Since the States were required to submit transportation conformity SIPs not later than November 24, 1994, the State's (Albuquerque/Bernalillo County's) SIP revision does not include the amendment of February 8, 1995. Lack of amended sections of 40 CFR 51.448 in the Albuquerque/Bernalillo County's rules makes the local rules more stringent than the Federal rules. However, the EPA believes that the Albuquerque Environmental Health Department has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. The agency in no way intentionally adopted more stringent rules than the Federal rules in developing its transportation conformity SIP. Therefore, it would be unreasonable to discredit the agency's good faith effort in submitting the transportation conformity SIP on time and disapprove this portion of the State's SIP. Since the Albuquerque Environmental Health Department will be required to submit a SIP revision in the near future to incorporate the amended portions of the Federal transportation conformity rules, the EPA believes that it would be reasonable to exclude the section of the local rules which correspond to 40 CFR 51.448, from this SIP approval action. As a result, the EPA is not taking any action on section 42.11 of the Albuquerque/Bernalillo County rules.

C. Evaluation of Albuquerque/Bernalillo County Rules

The Albuquerque Environmental Health Department (AEHD) is the lead air agency for SIP development, adoption, and enforcement in the Bernalillo County carbon monoxide nonattainment area. The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, ''A'' class counties (as defined in the New Mexico statute) and any municipality within an ''A'' class county to create a municipal, county, or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established such a board, Albuquerque/Bernalillo County Air Quality Control Board, for administration and enforcement of NMAQCA because Bernalillo County is an ''A'' class county. The AEHD is the regulatory and administrative agency for implementing and enforcing the air quality control regulations of the Board in the Bernalillo County nonattainment area.

On December 19, 1994, the Governor of New Mexico submitted a SIP revision on behalf of Albuquerque/Bernalillo County in compliance with 40 CFR Part 51 Subpart T that contained the transportation conformity and its consultation rule. The SIP revision was adopted by the Albuquerque/Bernalillo County Air Quality Control Board on November 9, 1994, after appropriate public participation and interagency consultation. The AEHD has adopted the Federal transportation conformity rules in verbatim form except for the interagency consultation rule which has been developed in the manner described earlier in this notice. The AEHD has made limited changes and has added additional definitions, where necessary, to create consistency with the local processes, procedures, and area-specific terms or names. These minor modifications and additional clarifications do not in any way alter the effect, implementation and enforcement of the conformity rules in the Bernalillo County nonattainment area. The EPA has determined that AEHD's transportation conformity rule meets the Federal requirements except as provided in section II(B) of this notice, and EPA is approving this SIP revision.

III. Final Approval Action

The EPA is approving the transportation conformity SIP revision for the Albuquerque/Bernalillo County nonattainment area except for section

42.11. The EPA is not taking any action on section 42.11 of the Albuquerque/Bernalillo County rules as discussed in detail in section II(B) of this notice. The EPA has evaluated this SIP revision and has determined that the Albuquerque/Bernalillo County Air Quality Control Board has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR Part 51 Subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of the rules by the Albuquerque Environmental Health Department at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on January 8, 1996, unless adverse or critical comments are received by December 8, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective January 8, 1996.

The EPA has reviewed this transportation conformity SIP for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

IV. Administrative Requirements

A. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

B. 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.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that 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.

C. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Ms. Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

D. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether the regulatory action is ''significant'', and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(59) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(59) A revision to the New Mexico State Implementation Plan for Transportation Conformity: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 ''Transportation Conformity'' as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994, was submitted by the Governor on December 19, 1994. No action is taken on AQCR No. 42 Section 11.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 ''Transportation Conformity'' as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994. No action is taken on AQCR No. 42 Section 11.

(ii) Additional material. None.

[FR Doc. 95–27682 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–56–1–7209a; FRL–5322–4]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document approves a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The final approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revisions submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is approving this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

DATES: This action is effective on January 8, 1996, unless notice is postmarked by December 8, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the CAA amendments of 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to a SIP. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR part 51 subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. All other Federal actions (actions other than those under Title 23 U.S.C. or the Federal Transit Act) were addressed in a separate Federal Register notice. The conformity rules require the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994. This notice does not address the conformity requirements of general Federal actions (40 CFR part 51 subpart W), and EPA will take action on these SIPs in a separate notice.

II. Evaluation of State's Submission

In response to the Federal Register notice of November 24, 1993, the State of Texas submitted a SIP revision which included adoption of the transportation conformity rules and other required documents. The transportation conformity SIP revision is applicable to the nonattainment or maintenance areas. It must be noted that the final transportation conformity rule requires that the majority of the Federal rules be incorporated in verbatim form with a few exceptions, however, the State rules can not be more stringent than the Federal rules. The consultation section of the rule (40 CFR 51.402) is among these exceptions and the State and local (where applicable) air quality agencies are required to develop their own consultation rules. The following paragraphs present EPA's review and evaluation of this SIP revision.

A. Development of Consultation Rules

The Federal rules require the SIP's to include processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts in accordance with the criteria set forth in 40 CFR part 51 § 51.402. Specifically, to implement the requirements of Section 51.402, the SIP revisions must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State Department of

Transportation, and the U. S. Department of Transportation (USDOT) with State and local air quality agencies and EPA before making conformity determinations, and by State and local air quality agencies and EPA with MPO's, State Departments of Transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, the State established an ad hoc multi-agency committee which included representatives from the State air quality agency, State DOT, USDOT, MPO's, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multi-agency efforts for developing the consultation rules. The committee met approximately on a biweekly basis and drafted consultation rules by using the requirements of 40 CFR 51.402 and 23 CFR 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Texas. The State has adequately addressed all provisions of 40 CFR 51.402 and has met the EPA SIP requirements.

B. Transition From the Interim Period to the Control Strategy Period; 40 CFR 51.448

The EPA promulgated an interim final rule on February 8, 1995, that amended certain provisions of 40 CFR 51.448 in the Federal transportation conformity rules. The interim final rule aligned the timing of certain transportation conformity consequences with the imposition of the CAA highway sanctions for a six-month period. The amendment delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete control strategy implementation plan. Since the States were required to submit transportation conformity SIPs not later than November 24, 1994, the State's SIP revision does not include the amendment of February 8, 1995. Lack of amended sections of 40 CFR 51.448 in the State's rules makes the State's rules more stringent than the Federal rules. However, the EPA believes that the State has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. The State in no way intentionally adopted more stringent rules than the Federal rules in developing its transportation conformity SIP. Therefore, it would be unreasonable to discredit the State's good faith effort in submitting the transportation conformity SIP on time and disapprove this portion of the State's SIP. Since the State will be required to submit a SIP revision in the near future to incorporate the amended portions of the Federal transportation conformity rules, the EPA believes that it would be reasonable to exclude the section of the State's rules which corresponds to 40 CFR 51.448, from this SIP approval action. As a result, the EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules.

C. Evaluation of the State Rules

On November 6, 1994, the Governor of Texas submitted a SIP revision in compliance with 40 CFR Part 51 Subpart T that contained the State's transportation conformity and its consultation rule. The SIP revision was adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, after appropriate public participation and interagency consultation. The TNRCC has adopted the Federal rules by ''incorporation by reference'' except for the interagency consultation rule which has been developed in the manner described earlier in this notice. The TNRCC transportation conformity rules are identical to the Federal rules and the State has made no additional changes or modifications. The EPA has determined that the TNRCC's transportation conformity rule meets the Federal requirements except as provided in section II(B) of this notice, and EPA is approving this SIP revision.

III. Final Approval Action

The EPA is approving the transportation conformity SIP revision for the State of Texas except for a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules. The EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules, as discussed in detail in section II(B) of this notice. The EPA has evaluated this SIP revision and has determined that Texas has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR Part 51 Subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of these rules by the TNRRC at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on January 8, 1996, unless adverse or critical comments are received by December 8, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective January 8, 1996.

The EPA has reviewed this transportation conformity SIP revision for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

IV. Administrative Requirements

A. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due

to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

B. 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.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that 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.

C. Procedural Information

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from May Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

D. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether the regulatory action is ''significant'', and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(96) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(96) A revision to the Texas State Implementation Plan for Transportation Conformity: Regulation 30 TAC Chapter 114 ''Control of Air Pollution from Motor Vehicles'', Section 114.27 ''Transportation Conformity'' as adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, was submitted by the Governor on November 6, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(i) Incorporation by reference.

(A) The TNRRC 30 TAC Chapter 114 ''Control of Air Pollution from Motor Vehicles'', 114.27 ''Transportation Conformity'' as adopted by the TNRCC on October 19, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(B) TNRCC order No. 94–40 as passed and approved on October 12, 1994.

(ii) Additional material. None.

[FR Doc. 95–27680 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

[FPMR Amendment G–110]

RIN 3090–AF53

Use of Cash To Procure Official Passenger Transportation Services

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation amends the Federal Property Management Regulations (FPMR) to grant agency heads or their designated representatives authority to approve all cash purchases of passenger transportation services. Although agency heads or their designated representatives currently have permanent authority to approve emergency cash purchases, their authority to approve nonemergency cash purchases of transportation services in excess of $100 was temporary and expired on July 31, 1995 (see FPMR Temporary Regulation G–57, Supp. 1). This amendment gives agencies permanent authority to approve all cash purchases of passenger transportation services.

EFFECTIVE DATE: August 1, 1995.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Policy, Procedures, and Liaison Branch, Office of Transportation Audits (202–219–3164).

SUPPLEMENTARY INFORMATION: FPMR Temporary Regulation G–57, published in the Federal Register on July 26, 1993 (58 FR 39664), invited agency comments through December 31, 1993, concerning the revised cash policy. Comments were

received from one Federal agency which asked that GSA clarify the policy in §§ 101–41.203–1 and 101–41.203–2(d) by indicating the limitations to be applied against a traveler for purchasing transportation tickets from other than a carrier or Travel Management Center (TMC) under GSA contract. This agency also suggested that the cash limit be raised from $100 to $300.

The Federal Travel Regulation contains in 41 CFR Part 301–15 the general policy regarding use of travel agents and TMC's by Federal executive agencies and specifies in § 301–3.4 when a one-time exception may be granted, the reimbursement amount allowed, and when reimbursement denial is appropriate. We believe incorporation of this policy by reference in § 101–41.203–1 is sufficient and that verbatim repetition is not needed.

Additionally, we are concerned that raising the cash limit would increase the likelihood of more travelers using cash to avoid use of contract fares, make audit of passenger transportation costs impracticable, and conflict with the Government's overall policy of reducing the use of cash. For these reasons, we have determined that it would not be prudent to raise the cash limit. Agencies should be mindful that a cash purchase which exceeds the established limit should be the occasional exception and not the standard.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, it is determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and Subpart 201–45.6 of this title.

List of Subjects in 41 CFR Part 101–41

Accounting, Air carriers, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

For the reasons set out in the preamble, 41 CFR Part 101–41 is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for Part 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726 and 40 U.S.C. 486(c).

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

2. Section 101–41.203–1 is amended by revising the heading and paragraph (a) to read as follows:

§ 101–41.203–1 Procurement from carriers.

(a) All passenger transportation services shall be procured with a GTR, Government contractor-issued charge card, or centrally billed account unless otherwise provided in § 101–41.203–2 of this subpart. Agency heads or their designees may specify which of these Government-provided methods of payment, or combination thereof, travelers will use to procure official passenger transportation services. Such services, regardless of the procurement method specified by the agency, must be procured directly from either a carrier or a travel agent. A travel agent may be used only as prescribed in the Federal Travel Regulation (FTR), 41 CFR chapters 301–304 or applicable regulations of the Department of Defense (DOD).

* * * * *

3. Section 101–41.203–2 is revised to read as follows:

§ 101–41.203–2 Use of cash.

(a) A GTR or Government excess baggage authorization ticket (GEBAT) shall not be used to procure passenger transportation services costing $10 or less, exclusive of Federal transportation tax, and to pay air excess baggage charges of $15 or less for each leg of a trip (see § 101–41.203–6), unless special circumstances justify their use. The contractor-issued charge card or centrally billed account shall be used for these purchases when practical. When not practical, use of cash may be authorized or approved. To procure passenger transportation services costing more than $10 but not more than $100, exclusive of Federal transportation tax, the GTR, Government contractor-issued charge card, or centrally billed account shall be used. Cash may be used for these purchases only when none of the other procurement methods is practical. For passenger transportation services costing more than $100, excluding Federal transportation tax, only a GTR, Government contractor-issued charge card, or centrally billed account may be used unless otherwise exempted in this subpart.

(1) When the use of cash is authorized to purchase the services set forth in paragraph (a) of this section, cash payment may be made with a travel advance in accordance with provisions of the FTR (41 CFR 301–10.3).

(2) Any credit card, other than the Government contractor-issued charge card, and all travelers checks shall be considered the equivalent of cash and subject to the $100 limitation provided in paragraph (a) of this section.

(Note—To protect the integrity of the Government charge card program designed for payment of allowable travel and transportation expenses incurred in connection with official travel, travelers shall be discouraged from using personal credit cards.)

(3) Procurement of passenger transportation services under the group or charter provisions of the FTR (41 CFR 301–3.4(b)(2)) is not subject to the provisions of this subpart.

(4) Authorization under paragraph (b) of this section to use cash in excess of $100 should be obtained prior to travel. In the absence of advance written authorization or approval, passenger transportation services exceeding $100 shall be purchased in accordance with policies and procedures prescribed in applicable Government travel regulations. It is a traveler's responsibility to know that use of a GTR, Government contractor-issued charge card, or centrally billed account may be required to obtain certain discount fares and to comply with the mandatory provisions of the FTR governing the use of contract airline service. Cash shall not be used to circumvent the regulations governing airline contracts.

(b) Cash purchases of transportation services in excess of $100 shall be discouraged and each agency shall establish procedures to encourage Federal travelers to use a Government contractor-issued charge card, centrally billed account, or GTR instead of cash to purchase passenger transportation services. Agencies shall monitor and control cash purchases of transportation services in a manner that will ensure such purchases are kept to a minimum.

(1) When a Federal traveler does not use a GTR, Government contractor-issued charge card, or centrally billed account, heads of agencies, or their designated representatives, may in limited instances authorize travelers to exceed the $100 limitation when procuring passenger transportation services.

(i) Each agency shall establish guidelines for approval of cash purchases in excess of $100 and determine if the use of cash is due to:

(A) emergency circumstances (where use of a GTR, Government contractor-issued charge card, or centrally billed account was not possible); or

(B) agency failure to advise a new employee and/or invited or infrequent traveler of proper procedures for purchasing transportation services.

(ii) If a cash purchase is determined to have been made under a nonemergency circumstance, reimbursement shall not exceed the cost which would have been properly chargeable to the Government if the transportation services had been procured using one of the Government-provided methods of procurement. Should a Federal employee make cash purchases without just cause or deliberately attempt to circumvent use of GSA air or rail service programs for personal convenience or some other reason not consistent with sound travel management practices, the agency may, as provided in 31 U.S.C. 3702, send all documents related to the travel to the Comptroller General, General Accounting Office, Claims Section, Washington, DC 20548, for a decision on the traveler's right to reimbursement.

(2) Delegation of authority for authorizing and approving the use of cash in excess of $100 for the procurement of transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. Any such delegation shall be made in writing and copies shall be retained to permit monitoring of the system. The agency shall make delegation of authority records available for examination by GSA auditors.

(3) To justify the use of cash in excess of $100 when procuring passenger transportation services, both the agency head, or the designated representative, and the traveler shall certify on the travel voucher the necessity for such use.

(4) After a traveler has been reimbursed for a cash purchase, copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF's 1170, Redemption of Unused Tickets, shall be forwarded for audit to the General Services Administration, Transportation Audit Division (FWA), Attention: Code E, Washington, DC 20405.

(5) The agency shall maintain travel vouchers and make them available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see 36 CFR 1228.22), provides instructions for the disposal of travel vouchers.

(c) GSA (FWA) will report to the appropriate military or civilian agency travel manager for appropriate action suspected travel management errors and/or misroutings which result in higher travel costs to the Government.

(d) A traveler who uses cash to purchase individual passenger transportation services shall procure such services directly from the carrier or from a travel agent under GSA or DOD contract (see § 101–41.203–1), and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment must be preprinted or otherwise annotated on the travel voucher and shall be initialed by the traveler.

(e) Travelers using cash to procure passenger transportation services shall be made aware by their employing agencies of the provisions of § 101–41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers (see § 101–41.203–1(b)).

Appendix to Subchapter G [Amended]

4. The appendix to subchapter G is amended by removing FPMR Temp. Reg. G–57 and G–57 Supp. 1.

Dated: October 26, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 95–27475 Filed 11–7–95; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 201–39

RIN 3090–AF57

Amendment of FIRMR Provisions to Provide For Multi-Agency Use of Contracts For Federal Information Processing (FIP) Resources

AGENCY: Information Technology Service, GSA.

ACTION: Final rule.

SUMMARY: This document amends Federal Information Resources Management Regulation (FIRMR) provisions to provide for multi-agency use of contracts for FIP resources, and address the applicability of Federal Acquisition Regulation (FAR) subpart 17.5 when one agency acquires FIP resources through another agency's contract which has been awarded pursuant to a delegation of procurement authority from GSA under the Brooks Act.

DATES: This rule is effective December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Judy Steele, GSA/KAR at (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking (NPR) was published in the Federal Register on December 7, 1993, clarifying requirements when one agency acquires FIP resources through another agency's contract. All comments were considered, and, where possible, incorporated into the final rule.

(2) A significant concern of some commenters was that the proposed rule did not sufficiently address the relationship of the Economy Act to the Brooks Act when an agency acquires FIP resources through another agency's contract and transfers associated funds. When one agency uses another agency's contract, statutory authority must exist for use of the contract and for a related transfer of funds. One authority is the Economy Act (31 U.S.C. 1535). If the Economy Act is used, agencies must comply with implementing provisions in FAR subpart 17.5. Agencies may use the Brooks Act (40 U.S.C. 759) as the statutory authority for Federal interagency agreements for goods and services within the scope of the Brooks Act. The Brooks Act provides GSA authority independent of the Economy Act to procure, lease or transfer FIP resources for Federal agencies. By its terms, GSA's procurement authority under the Brooks Act can be delegated to other agencies. If the Brooks Act applies, the Economy Act provisions under 31 U.S.C. 1535 do not apply. When agencies comply with the policies and procedures established in this amendment in acquiring FIP resources, they are acting under GSA's delegated Brooks Act authority. Therefore, a related transfer of funds when using contracts that are made available by GSA for use on a Governmentwide basis may be made without regard to the Economy Act. However, the timing of obligations is governed by various authorities, the terms of the appropriating act itself, legislation authorizing the appropriation, the organic or enabling legislation which prescribes a function or creates a program with the appropriated funds, statutory provisions that allow or prohibit use of appropriated funds, and general rules that have been developed through the Comptroller General and the courts. If an agency uses the Brooks Act as authority for a transfer of funds for FIP resources, a binding agreement between the agency providing the funds and the agency that will issue an order

against a contract would normally constitute an obligation of funds by the agency providing the funds, absent any prohibition or condition on an agency's expenditure of the funds involved. The revised amendment clarifies that the Brooks Act is the appropriate authority when agencies use contracts that have been awarded pursuant to a delegation of procurement authority from GSA under 40 U.S.C. 759. The revised amendment also consolidates the procedures presented in the NPR for the use of such contracts.

(3) Section 201–39.1702 is added to permit agencies to make new indefinite-delivery/indefinite-quantity type contracts for commercial FIP products and services available for use by all agencies, and to clarify that FAR subpart 17.5 does not apply when agencies use another agency's contract that has been awarded pursuant to a delegation of authority from GSA under 40 U.S.C. 759.

(4) GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. It is certified that this rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.).

List of Subjects in 41 CFR Part 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

1. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–39.1700 is revised to read as follows:

§ 201–39.1700 Scope of subpart.

This subpart prescribes policies and procedures for using options and contracts available to Federal agencies for FIP resources.

3. Sections 201–39.1702, 201–39.1702–1 and 201–39.1702–2 are added to read as follows:

§ 201–39.1702 Interagency Acquisitions.

§ 201–39.1702–1 Policy.

FAR subpart 17.5 concerning interagency acquisitions does not apply when acquiring or providing FIP resources under a contract which has been awarded pursuant to a delegation of procurement authority from GSA under 40 U.S.C. 759. Agencies should cite 40 U.S.C. 759 as their contracting authority.

§ 201–39.1702–2 Procedures.

(a) Agencies are encouraged to make new indefinite-delivery/indefinite-quantity (IDIQ) contracts for commercial FIP products and services available for use by other agencies.

(1) Contracts must be awarded using full and open competition.

(2) Contract provisions should allow other Federal agencies to use the contracting agency's contract to satisfy requirements that are within the scope of products and services available under the contract until the total contract dollars are expended, subject to ordering limitations imposed by the contracting agency. At the contracting agency's discretion, other agencies may use portions of the contract not needed by the contracting agency.

(3) In addition, contract requirements for products and services may be increased up to twenty percent beyond the contracting agency's requirements in anticipation of overall greater use by the government without conducting additional studies to determine the anticipated needs of other agencies that may place orders under the contract. Use of the contract by other agencies should not be limited to the percent contract requirements are increased. Other agencies should have priority for use of the percent that the contract requirements are increased.

(b) There are no specific limitations on agencies combining similar requirements under a single consolidated contract when the requirements of individual agencies are determined in accordance with FIRMR subpart 201–20.1.

Dated: October 27, 1995.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 95–27582 Filed 11–7–95; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7160]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Coconino	City of Flagstaff	September 21, 1995, September 28, 1995, Arizona Daily Sun.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	August 16, 1995	040020
Arizona: Coconino	City of Flagstaff	September 22, 1995, September 29, 1995, Arizona Daily Sun.	The Honorable Christopher J. Bavasi, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.	August 17, 1995	040020
Arizona: Maricopa .	City of Glendale	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Elaine Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	August 7, 1995	040045
Arizona: Maricopa .	Unincorporated Areas.	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Tom Rawles, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, Phoenix, Arizona 85003.	August 7, 1995	040037
Arizona: Maricopa .	City of Peoria	August 31, 1995, September 7, 1995, Arizona Republic.	The Honorable Ken C. Forgia, Mayor, City of Peoria 8401 West Monroe, Peoria, Arizona 85345.	August 7, 1995	040050
California: Santa Clara.	City of Gilroy	September 22, 1995, September 29, 1995, Dispatch.	The Honorable Don F. Gage, Mayor, City of Gilroy, 7351 Rosanna Street, Gilroy, California 95020.	August 31, 1995	060340
California: Santa Clara.	Unincorporated Areas.	September 22, 1995, September 29, 1995, San Jose Mercury News.	The Honorable Mike M. Honda, Chairman, Santa Clara County Board of Supervisors, County Government Center 70 West Hedding Street, East Wing, Tenth Floor, San Jose, California 95110.	August 31, 1995	060337
Colorado: Adams, Boulder, and Jefferson.	City of Broomfield .	August 31, 1995, September 7, 1995, Daily Camera.	The Honorable Bill Berens, Mayor, City of Broomfield, P.O. Box 1415, Broomfield, Colorado 80038–1415.	August 2, 1995	085073
Hawaii: Maui	Unincorporated Areas.	September 20, 1995, September 27, 1995, Maui News.	The Honorable Linda Crockett Lingle, Mayor, Maui County, 250 South High Street, Wailuku, Maui, Hawaii 96793.	August 17, 1995	150003
Iowa: Polk	Unincorporated Areas.	September 22, 1995, September 29, 1995, The Des Moines Register.	The Honorable Jack Bishop, Chairman, Polk County Board of Supervisors, 111 Court Avenue, Room 300, Des Moines, Iowa 50309.	August 14, 1995	190901
Texas: Tarrant	City of Forest Hill ..	August 31, 1995, September 7, 1995, Forest Hill News.	The Honorable Esterlene Griffin, Mayor, City of Forest Hill, 6800 Forest Hill Drive, Forest Hill, Texas 76140–1299.	July 28, 1995	480595

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Gregg and Rusk.	City of Kilgore	September 22, 1995, September 29, 1995, Kilgore News Herald.	The Honorable Bill Wilson, Mayor, City of Kilgore, P.O. Box 1125, Kilgore, Texas 75663.	August 23, 1995	480263
Texas: Tarrant	City of North Richland Hills.	September 21, 1995, September 28, 1995, Mid-Cities News.	The Honorable Tommy Brown, Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, Texas 76182–0609.	August 17, 1995	480607
Texas: Bexar	City of San Antonio	September 19, 1995, September 26, 1995, San Antonio Express News.	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	August 14, 1995	480045

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27661 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7158]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: New Haven.	Town of Guilford ...	September 5, 1995, September 12, 1995, *Shoreline Times*.	Mr. Edward Lynch, First Selectman of the Town of Guilford, Guilford Town Hall, 31 Park Street, Guilford, Connecticut 06437.	August 30, 1995	090077 B
Connecticut: Fairfield.	City of Norwalk	October 4, 1995, October 11, 1995, *Norwalk Hour*.	The Honorable Frank J. Esposito, Mayor of the City of Norwalk, City Hall, 125 East Avenue, Norwalk, Connecticut 06851.	October 12, 1995	090012 D
Georgia: Cobb	Unincorporated areas.	September 21, 1995, September 28, 1995, *Marietta Daily Journal*.	Mr. William Byrne, Chairman of the Cobb County Board of Commissioners, 100 Cherokee Street, Suite 300, Marietta, Georgia 06851.	September 11, 1995 ...	130052
Illinois: DuPage	Village of Glendale Heights.	September 28, 1995, October 5, 1995, *Glendale Heights Press*.	Mr. Ben Fajardo, Glendale Heights Village President, 300 East Civic Center Plaza, Glendale Heights, Illinois 60139.	September 18, 1995 ...	170206 C
Illinois: Cook	Village of Orland Park.	September 28, 1995, October 5, 1995, *The Star and The Daily Southtown Economist*.	The Honorable Daniel McLaughlin, Major of the Village of Orland Park, 14700 South Ravinia Drive, Orland Park, Illinois 60462.	September 21, 1995 ...	170140 B
Massachusetts: Middlesex.	City of Lowell	October 3, 1995, October 10, 1995, *The Sun*.	Mr. Richard Johnson, Manager of the City of Lowell, 375 Merrimack Street, Lowell, Massachusetts 01852.	January 8, 1996	250201 C
Ohio: Montgomery	City of Trotwood ...	October 10, 1995, October 17, 1995, *Daily Court Reporter*.	Mr. Michael Ratcliff, City of Trotwood Manager, 35 North Olive Road, Trotwood, Ohio 45426.	September 19, 1995 ...	390417
Pennsylvania: Centre.	Township of Spring	September 15, 1995, September 22, 1995, *Centre Daily Times*.	The Honorable John H. Auman, Chairman of the Township of Spring Board of Supervisors, 1309 Blanchard Street, Bellefonte, Pennsylvania 16823–8625.	August 24, 1995	420269 C

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27660 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in

effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: Winnebago (FEMA Docket No. 7137).	Village of Machesney Park.	May 10, 1995, May 17, 1995, *The Park Journal*.	Mr. Steve Kuhn, President of the Village of Machesney Park, 300 Machesney Road, Machesney Park, Illinois 61111.	May 1, 1995	171009 A
New York: Monroe (FEMA Docket No. 7137).	Town of Greece	April 27, 1995, May 4, 1995, *The Greece Post*.	Mr. Roger Boily, Supervisor of the Town of Greece, 2505 West Ridge Road, Rochester, New York 14626.	April 21, 1995	360417 E

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27658 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of

ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
St. Cloud (City), Osceola County (FEMA Docket No. 7138)	
East Lake Tohopekaliga:	
In the vicinity of the intersection of Montana Avenue and Second Avenue	*58
Approximately 1,400 feet east of the intersection of Cypress Street and Oregon Avenue	*62
Maps available for inspection at the St. Cloud Planning Department, 2901 17th Street, St. Cloud, Florida.	
GEORGIA	
Cook County (unincorporated areas) (FEMA Docket No. 7138)	
Bear Creek:	
Approximately 1.1 miles downstream of East Sixth Street in the City of Adel	*214
At a point approximately 1,000 feet upstream of the confluence of Giddens Mill Creek	*230
Giddens Mill Creek:	
At confluence with Bear Creek	*230
Approximately 325 feet upstream of Elm Street	*231
Maps available for inspection at the County Commissioner's Office, 212 North Parrish Street, Adel, Georgia.	
Fayette County (unincorporated areas) (FEMA Docket No. 7138)	
Morning Creek:	
Approximately 0.72 mile upstream of the confluence with Flint River	*788
Approximately 250 feet upstream of the County boundary	*843
Broadnax Creek:	
At the confluence with Morning Creek	*841
Approximately 1,300 feet upstream of the upstream County boundary	*841
Tar Creek:	
At the confluence with Whitewater Creek	*846
Approximately 0.66 mile upstream of Rivers Road	*926
Sandy Creek:	
At the confluence with Whitewater Creek	*808
Approximately 150 feet upstream of Adams Road	*882
Sandy Creek Tributary:	
At the confluence with Sandy Creek	*824
At a point approximately 0.33 mile upstream of the confluence with Sandy Creek	*824
Flat Creek:	
At a point approximately 0.53 mile upstream of Smoke Rise Terrace	*856
At a point approximately 0.24 mile downstream of Pendleton Trail	*910
Line Creek:	
Approximately 0.9 mile downstream of Rockaway Road	*746
Approximately 0.46 mile downstream of Rockaway Road	*750
Approximately 300 feet upstream of the confluence of Trickum Creek	*872
Approximately 500 feet upstream of Johnson Road	*894
Trickum Creek:	
Approximately 200 feet upstream of the confluence with Line Creek	*872
Approximately 200 feet upstream of County boundary	*919
Ginger Cake Creek:	
At the confluence with Whitewater Creek	*793
Approximately 0.44 mile upstream of Brogdon Road	*889
Perry Creek:	
At the confluence with Whitewater Creek	*780
At State Route 92 (Lee Street)	*876
Whitewater Creek:	
At a point approximately 350 feet downstream of State Route 85	*750
Approximately 500 feet downstream of confluence of Whitewater Creek Tributary	*873
South Camp Creek:	
At confluence with Whitewater Creek	*759
Approximately 0.73 mile upstream of the confluence with Whitewater Creek	*759
Maps available for inspection at the Fayette County Engineering Department, 140 Stonewall Avenue West, Fayetteville, Georgia.	
Fayetteville (city), Fayette County (FEMA Docket No. 7138)	
Ginger Cake Creek:	
At Lanier Avenue	*813
Approximately 50 feet downstream of Fayetteville Waterworks dam	*821
Perry Creek:	
At upstream side of State Route 92 (Lee Street)	*878
Approximately 100 feet upstream of State Route 92 (Lee Street)	*878
Maps available for inspection at the Fayetteville Engineering Department, 240 East Lanier Avenue, Fayetteville, Georgia.	
Peachtree City (city), Fayette County (FEMA Docket No. 7138)	
Flat Creek:	
Approximately 250 feet downstream of Lake Kedron Dam	*808
Approximately .53 mile upstream of Smoke Rise Terrace	*856
Gin Branch:	
At the confluence with Flat Creek	*841
Approximately 400 feet downstream of Peachtree Parkway	*841
South Camp Creek:	
Approximately 1,100 feet upstream of E.A. Brown Dam	*787
Approximately 100 feet upstream of Spear Road	*847

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Peachtree City Engineering Department, 151 Willow Bend Road, Peachtree City, Georgia.	
Tyrone (town), Fayette County (FEMA Docket No. 7138)	
Trickum Creek:	
Approximately 1,300 feet upstream of the confluence with Line Creek	*876
Approximately 0.52 mile downstream of Kirkley Road	*895
Flat Creek:	
Approximately 0.40 mile upstream of Dogwood Trace	*878
Approximately 125 feet upstream of Swanson Drive	*927
Maps available for inspection at the Building Official's Office, 881 Senoia Road, Tyrone, Georgia.	
ILLINOIS	
Central City (village), Marion County (FEMA Docket No. 7130)	
Crooked Creek:	
Approximately 1,400 feet downstream of Illinois Central Railroad	*465
Approximately 2,700 feet upstream of new U.S. Route 51	*469
Maps available for inspection at the Village Hall, 141 North Harrison, Centralia, Illinois.	
MINNESOTA	
Alvarado (city), Marshall County (FEMA Docket No. 7140)	
Snake River:	
At downstream corporate limits (State Route 1)	*811
At upstream corporate limits (approximately 0.6 mile upstream of State Route 1)	*813
Maps available for inspection at the Alvarado City Hall, Marshall Street, Alvarado, Minnesota.	
PENNSYLVANIA	
German (township), Fayette County (FEMA Docket No. 7149)	
Monongahela River:	
At confluence of Antram Run	*789
At upstream corporate limits	*798
Maps available for inspection at the German Township Building, R.D. #1, Box 287, McClellandtown, Pennsylvania.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27659 Filed 11–7–95; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–129; RM–8673]

Radio Broadcasting Services; Colchester, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sharon K. Bryan, allots Channel 281A at Colchester, Illinois, as the community's first local aural transmission service. *See* 60 FR 40812, August 10, 1995. Channel 281A can be allotted to Colchester in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) northwest to avoid a short-spacing to the licensed site of Station WMOS(FM), Channel 280A, Quincy, Illinois. The coordinates for Channel 281A at Colchester are North Latitude 40–31–26 and West Longitude 90–51–08. With this action, this proceeding is terminated.

DATES: Effective December 18, 1995. The window period for filing applications will open on December 18, 1995 and close on January 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–129, adopted October 23, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 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: Sections 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 Illinois, is amended by adding Colchester, Channel 281A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27575 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 110195A]

Groundfish of the Gulf of Alaska; Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to use the total allowable catch (TAC) for Pacific cod in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 7, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the allocation of Pacific cod for the inshore component in the Central Regulatory Area of the GOA was established by the final 1995 harvest specifications of groundfish (60 FR 8470, February 14, 1995) as 41,085 metric tons (mt). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory

Area of the GOA was closed under § 672.20(c)(2)(ii) in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (60 FR 53714, October 17, 1995). NMFS has determined that as of October 21, 1995, 650 mt remain unharvested.

The Director, Alaska Region, NMFS, has determined that the 1995 TAC for Pacific cod in the Central Regulatory Area of the GOA has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. All other closures remain in full force and effect.

This action opens the directed fishery for Pacific cod by vessels catching Pacific cod with jig or pot gear for processing by the inshore component in the Central Regulatory Area of the GOA. Directed fishing for groundfish with hook-and-line and trawl gear is currently prohibited (60 FR 26694, May 18, 1995; 60 FR 37600, July 21, 1995; 60 FR 54818, October 26, 1995).

Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: November 2, 1995.

Richard W. Surdi,

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

[FR Doc. 95–27579 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 216
Wednesday, November 8, 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

Federal Crop Insurance Corporation

7 CFR Parts 401, 443, and 457

RIN 0563–AB43

General Crop Insurance Regulations, Various Endorsements; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby proposes to amend the General Crop Insurance Regulations, Hybrid Sorghum Seed and Rice Endorsements; the Hybrid Seed Crop Insurance Regulations; and the Common Crop Insurance Regulations, Small Grains, Cotton, Extra Long Staple Cotton, Sunflower Seed and Coarse Grains Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates after the effective date of this rule, by revising prevented planting coverage. The intended effect of this regulation is to expand prevented planting benefits available under the various policies being amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted by the close of business November 20, 1995 to be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinions on this proposed rule 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: For further information and a copy of the Cost-Benefit Analysis and Regulatory Flexibility Analysis to the General Crop Insurance Regulations; Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations for prevented planting provisions, contact Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for small grains is July 1, 1998; coarse grains, cotton, Extra Long Staple cotton and Sunflower Seed is March 1, 1999; Hybrid Seed is October 1, 1997; Hybrid Sorghum Seed is May 1, 2000; and Rice is August 29, 1998.

This rule has been determined to be ''economically significant'' for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget (''OMB'').

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected Treasury costs of these changes are expected to range between $2.1 and $20.8 million. Added costs are due to higher reimbursements to reinsured companies and for premium subsidies for producers. The estimates assume the majority of farmers will decline the coverage for the substitute crop, opting instead for a reduced premium on the intended crop. Nationwide, premium rates will increase 6 to 7 percent for the added coverage. As examples of monetary impacts, this means average increases in the farmer paid premium of 20–25 cents per acre for wheat in the Northern Plains; 30 cents for corn in Iowa; and 60–90 cents per acre for upland cotton. However, the premium rate increases will not be uniform. Instead, the highest risk areas (such as lowlands along rivers and similar conditions) can expect greater increases in premium to cover the added risk. Producers who farm such lands are expected to be the primary group that will retain this added coverage and elect to pay the additional premium. The changes to the prevented planting rules are expected to provide farmers with added assistance in extreme weather conditions, but do so in a manner that maintains the actuarial integrity of the Federal crop insurance program.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations have been submitted to OMB for their approval under section 3507(d) of the Paperwork Reduction Act of 1995. These requirements were previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above-referenced docket.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including General Crop Insurance Regulations, Hybrid Seed Crop Insurance Regulations and Common Crop Insurance Regulations.'' The information to be collected includes: a crop insurance acreage report, an insurance application and continuous contract. Information collected from the acreage report and application is electronically transmitted to FCIC by the reinsured companies. Some respondents may provide additional information for the purpose of selecting insurance options that apply to specific crops or specific areas in which a crop is produced. Potential respondents to this information collection are growers of crops that are eligible for Federal Crop Insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine the correct parties to the agreement, determine and collect premiums or other monetary amounts (or fees), and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,750,015 respondents. The total annual burden on the public for this

information collection is 2,668,750 hours. The total annual burden has increased from the 1995 requirements to reflect the paperwork burden on the reinsured companies.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C 20503 and to Bonnie Hart, Information Management Branch, Consolidated Farm Service Agency, U.S. Department of Agriculture, Washington, D.C. 20250. Copies of the information collection may be obtained from Bonnie Hart at the above address. Telephone (202) 690–2857.

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 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.

The amount of work required of the insurance companies and CFSA offices delivering the policies and the procedures therein may increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. Therefore, this action has been reviewed under the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and a Regulatory Flexibility Analysis is available to interested persons at the address listed above.

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 promulgated by the National Appeals Division under Pub. L. No. 103–354 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

Current regulations do not allow an insured producer to obtain a prevented planting guarantee for one crop and plant a substitute crop intended for harvest in the same crop year on the same land. By this rule, an insured who purchases limited or additional coverage beginning with the 1996 crop year for spring crops with contract change dates after the effective date of this rule, will be eligible to: (1) receive a prevented planting guarantee equal to 25 percent of the guarantee for timely planted acreage (20 percent for hybrid seed and 17.5 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is planted to a substitute crop and, as applicable, a 0/92 or 50/92 program benefit; (2) exclude eligibility for prevented planting coverage when a substitute crop is planted in return for a reduction in the premium; and (3) receive prevented planting coverage on double cropped acreage (except for ELS cotton) if the producer can provide proof that planting of a second crop (double crop) following the harvest of an initial crop in the same crop year is a farming practice normally followed by that producer. By this rule, the prevented planting provisions also: (1) allow all insured producers to receive a 0/92 or 50/92 program benefit, as applicable, and a crop insurance prevented planting guarantee equal to 50 percent of the guarantee for timely planted acreage (40 percent for hybrid seed and 35 percent for cotton, ELS cotton, and rice) when acreage that is prevented from being planted is not planted to a substitute crop; (2) eliminate the provisions that require acreage eligible for a prevented planting guarantee to be prorated to all units that could have been planted in the crop year; (3) change the date that notice of loss is required, from 3 days after the final planting date or the date the producer discovers that planting will not be possible within the late planting period, to the acreage reporting date; and (4) allow prevented planted acreage planted with a conserving use cover crop to be hayed and grazed without limitation.

This rule defines prevented planting as ''Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.'' This definition was designed to accommodate extremely varied production areas and farming practices; including those in which growers do not plant after the final planting date and those in which growers often do plant a crop within the late planting period. Some farming areas have relatively short growing seasons which make the prospect of a successful crop doubtful if planted much beyond the final planting date. Other areas have much longer growing seasons and often allow a successful crop to be grown even if planted well after the final planting date. In both long and short growing areas some farming practices, such as the production of silage, allow a grower to plant after the final planting date and still produce an acceptable crop. FCIC is specifically requesting comments and recommendations regarding this definition.

List of Subjects

7 CFR Part 401

Crop insurance, Hybrid sorghum seed, Rice.

7 CFR Part 443

Crop insurance, hybrid seed.

7 CFR Part 457

Crop insurance, small grains, cotton, ELS cotton, sunflower seed and coarse grains.

Proposed Rule

In this document, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the General Crop Insurance Regulations (7 CFR part 401) by amending the Hybrid Sorghum Seed (§ 401.109) and Rice (§ 401.120) Endorsements; the Hybrid Seed Crop Insurance Policy (7 CFR 443.7(d)); and the Common Crop Insurance Regulations (7 CFR part 457) by amending the Small Grains (§ 457.101), Cotton (§ 457.104), Extra Long Staple

Cotton (§ 457.105), Sunflower Seed (§ 457.108), and Coarse Grains (§ 457.113) Crop Insurance Provisions; applicable beginning with the 1996 crop year for spring crops with contract change dates after the effective date of the final rule. Accordingly, 7 CFR parts 401, 443, and 457 are proposed to be amended as follows:

PART 401—[AMENDED]

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

Authority: 7 U.S.C. 1506(1).

2. Section 401.109 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) of the Hybrid Sorghum Seed Endorsement to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the amount of insurance for such acreage will be twenty-five percent (25%) of the amount of insurance for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based may be required.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you

were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

§ 401.109 [Amended]

3. Section 401.109 is amended by revising paragraph 13(o) to read as follows:

* * * * *

13. Meaning of Terms

* * * * *

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

4. Section 401.120 is amended by revising paragraphs 10(a)(3), 10(b), and 10(d) of the Rice Endorsement to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7 b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received.

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

5. Section 401.120 is amended by revising paragraph 11(h) to read as follows:

* * * * *

11. Meaning of Terms

* * * * *

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

PART 443—[AMENDED]

6. The authority citation for 7 CFR part 443 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

7. Section 443.7(d) is amended by revising paragraphs 17(a)(3), 17(b), and 17(d) of the Hybrid Seed Crop Insurance Policy to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) * * *

17. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the amount of insurance for such acreage will be twenty percent (20%) of the amount of insurance for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage.

All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based may be required.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop for previous years for which you have continuous records of planted acreage.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (acreage that is less than 20 acres or 20 percent (20%) of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted on the adjoining acreage, unless you can show that you had the inputs available to plant and produce another insured crop on the acreage before the final planting date);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four crop years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on such acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) Insured under the Catastrophic Risk Protection Endorsement if you:

(1) Have already received a prevented planting indemnity, guarantee or amount of insurance for such acreage in the same crop year, even if the acreage has a history of double-cropping; or

(2) Plant any other crop on the acreage for harvest, haying or grazing in the same crop year (other than a cover crop as specified in paragraph (a)(3)(i) of this section), even if such crop fails;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

8. Section 443.7(d) is amended by revising paragraph 18(w) to read as follows:

* * * * *

18. Meaning of Terms

* * * * *

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

PART 457—[AMENDED]

9. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1).

10. Section 457.101 is amended by revising paragraph 1(p) of the Small Grains Crop Provisions to read as follows:

§ 457.101 Small Grains Crop Insurance.

* * * * *

1. Definitions

* * * * *

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

11. Section 457.101 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented

from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60

acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

12. Section 457.104 is amended by revising paragraph 1(n) of the Cotton Crop Provisions to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

13. Section 457.104 is amended by revising paragraphs 12(a)(3), 12(b), and 12(d) to read as follows:

* * * * *

12. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed to another crop, if applicable;

(B) The number of acres planted to cotton during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any

program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

14. Section 457.105 is amended by revising paragraph 1(l) of the ELS Cotton Crop Provisions to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

15. Section 457.105 is amended by revising paragraphs 12(a)(2) and 12(b) through (h) to read as follows:

* * * * *

12. Prevented Planting

(a) * * *

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(1) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(2) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States

Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(i) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year;

(v) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year;

(vi) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

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

16. Section 457.108 is amended by revising paragraph 1(l) of the Sunflower Seed Crop Provisions to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

1. Definitions

* * * * *

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

17. Section 457.108 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

18. Section 457.113 is amended by revising paragraph 1(n) of the Coarse Grains Crop Insurance Provisions to read as follows:

§ 457.113 Coarse Grains Crop Insurance Provisions.

* * * * *

1. Definitions

* * * * *

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting.

* * * * *

19. Section 457.113 is amended by revising paragraphs 13(a)(3), 13(b), and 13(d) to read as follows:

* * * * *

13. Late Planting and Prevented Planting

(a) * * *

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the intended crop was prevented from being planted. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

* * * * *

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For

example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case the production guarantee for such acreage will be twenty-five percent (25%) of the production guarantee for timely planted acres. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee may be required.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Consolidated Farm Service Agency (CFSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred before the sales closing date. Eligible acreage for each CFSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing before the sales closing date, eligible acreage will not exceed the greater of:

(A) The CFSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from planting, if any crop has already received a prevented planting indemnity, guarantee or amount of insurance on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which another crop is prevented from planting, if any crop was planted and failed, or was planted and harvested (including hayed or grazed) on the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received;

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single CFSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. The total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

Done in Washington, D.C., November 3, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–27711 Filed 11–3–95; 4:27 pm]

BILLING CODE 3410-FA-P

FEDERAL ELECTION COMMISSION

11 CFR Part 9002

[Notice 1995–17]

Electoral College Expenditures

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on November 18, 1994, by Anthony F. Essaye and William Josephson. The petition addressed treatment of a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives. The

Commission has decided not to initiate a rulemaking on this topic at this time.

DATES: November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 18, Anthony F. Essaye and William Josephson filed a petition for rulemaking seeking to clarify whether a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives are governed by the Federal Election Campaign Act [''FECA''], 2 U.S.C. 431 *et seq.*, or the Presidential Election Campaign Fund Act [''the Fund Act''], 26 U.S.C. 9001 *et seq*. The particular question raised was whether such disbursements count against publicly funded presidential candidates' general election expenditure limits established at 2 U.S.C. 441a(b)(1) and (c).

The Commission published a Notice of Availability [''NOA''] on Dec. 8, 1994. 59 F.R. 63274. The Commission received comments from the Internal Revenue Service and the Republican National Committee in response to the NOA.

The NOA stated that the Commission might incorporate the issues addressed in the rulemaking petition into a larger, then-ongoing rulemaking regarding the public funding of presidential primary and general election campaigns. However, the Commission subsequently decided to address these issues in a separate rulemaking document. 60 F.R. 31854 (June 16, 1995).

One commenter argued that the Commission does not have jurisdiction over the Electoral College and, therefore, neither the FECA nor the Fund Act applies to these expenditures. However, the Commission has the authority, and responsibility, to oversee a publicly funded candidate's qualified campaign expenses. This includes the responsibility to insure that any expenditures made to further a candidate's campaign for election, including those made in connection with the meeting of the Electoral College, are properly categorized and reported.

Commission regulations at 11 CFR 100.2(a) define ''election'' as ''the process by which individuals . . . seek nomination for election, or election, to Federal office.'' Under U.S. Const. art. II, sec. 1 and amend. XII, the meeting of the Electoral College, as well as any subsequent action by the House of Representatives that might become necessary to decide a presidential election, are part of that process. Similarly, under the Fund Act ''qualified campaign expense'' is defined for purposes of the general election as any expenditure ''[i]ncurred by the candidate of a political party for the office of President to further his election to such office.'' 26 U.S.C. 9002(11)(A), 11 CFR 9002.11(a). The Commission believes that many expenditures incurred in connection with the meeting of the Electoral College and/or subsequent action by the House of Representatives fall within these definitions.

The petition cites the exclusions from the definitions of ''contribution'' and ''expenditure'' at 11 CFR 100.7(b)(20) and 100.8(b)(20) of those disbursements made in connection with election contests and recounts as one basis for treating Electoral College expenses as outside the scope of both the FECA and the Fund Act. However, these exemptions refer to election contests and recounts, i.e., procedures that may be necessary to determine which candidate received the greatest number of votes in that state, not to Electoral College activity.

The petition also argues that, since the Electoral College always meets more than 30 days after the November general election, the end of the general election ''expenditure report period'' established at 26 U.S.C. 9002(12), the Fund Act does not apply to expenses incurred in connection with the Electoral College vote. The Electoral College meets on the first Monday after the second Wednesday in December, 3 U.S.C. 7; while the November general election is held on the Tuesday after the first Monday in November, 3 U.S.C. 1.

In response to this argument, the Commission notes that in most instances a strategy for dealing with Electoral College concerns will likely be developed well before the general election, if it appears a close contest is in the offing, and almost certainly before the end of the expenditure report period. The Commission believes that many of these expenses may appropriately be considered qualified campaign expenses for purposes of the Fund Act.

Also, the fact that an expense occurs more than 30 days after the November general election does not in and of itself mean that it is not covered by the Fund Act. For example, the Commission's regulations at 11 CFR 9004.4(a)(4)(i) permit a candidate to make disbursements for the purpose of defraying winding down costs for a potentially lengthy period after the general election.

On the other hand, the Commission recognizes that a potentially close Electoral College vote and/or subsequent action by the House of Representatives may generate unanticipated expenses at a time when campaigns will likely have already spent or budgeted nearly all of their available general election funds.

This situation has not arisen since the enactment of the FECA and the Fund Act. It is difficult to anticipate all the potential issues that should be addressed in a rulemaking of this nature. The Commission believes the better approach is to deal with these issues on a case by case basis when and if they arise, rather than trying to promulgate general rules that may or may not prove appropriate in dealing with particular circumstances. Therefore, at its open meeting of November 2, 1995, the Commission voted not to initiate a rulemaking at this time on treatment of a presidential candidate's receipts or disbursements regarding the Electoral College process and the process of electing the President and Vice President by the United States House of Representatives.

Dated: November 3, 1995.

Lee Ann Elliott,

Vice Chairman.

[FR Doc. 95–27640 Filed 11–7–95; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–95–3]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to EPA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the

public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 8, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132. Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on November 2, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 28301.

Petitioner: Mr. David W. Galvin.

Regulations Affected: 14 CFR 135.293(a) (6) and (7).

Description of Rulechange Sought: To amend the requirements for initial and recurrent pilot testing in the area of meteorological knowledge, including procedures for recognizing and avoiding severe weather situations.

Petitioner's Reason for the Request: The petitioner feels that subject testing would be better directed based on exact cause information stemming from recent tests concerning data recovered from weather-related accidents.

Docket No.: 28347.

Petitioner: King Schools, Inc.

Sections of the FAR Affected: 14 CFR SFAR 51–1.

Description of Rulechange Sought: To permit turbojet aircraft to operate under visual flight rules in the Los Angeles Special Flight Rules Area.

Petitioner's Reason for the Request: The petitioner feels that such an amendment would result in enhanced safety and reduced cost for turbojet operators, reduce pollution, and conserve resources.

[FR Doc. 95–27703 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–NM–89–AD]

Airworthiness Directives; Airbus Model A320–231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–231 series airplanes. This proposal would require modification of the fire wall of each engine. This proposal is prompted by a report of a fire in the engine of an in-service airplane due to the fire wall being improperly sealed during production. The actions specified by the proposed AD are intended to prevent propagation of a fire through a gap (opening) in the fire wall in the event of an engine fire, as a result of improperly sealed fire wall.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589, fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–89–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–231 series airplanes. The DGAC advises that it has received a report of a fire in the engine of an in-service airplane. Investigation revealed that, during production, the fire wall was improperly sealed, which resulted in a gap (opening) in the fire wall. This condition, if not corrected, could result in propagation of a fire through the fire wall in the event of an engine fire.

Airbus has issued A320–78–1009, dated October 14, 1993, which describes procedures for modification of the fire wall of each engine. The modification entails installation of a seal assembly (consisting of a bracket and bulb seal)

on the end of the pylon heat shield. This modification will seal the gap (opening) in the fire wall between the areas in zone 1 and zone 2, thus creating a fire barrier for both engines. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 94–167–057 (B), dated July 20, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the fire wall of each engine. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,960, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

39.13 [Amended]

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

Airbus Industrie: Docket 95–NM–89–AD.

Applicability: Model A320–231 series airplanes on which Airbus Modification 23929 (reference Airbus Service Bulletin A320–78–1009) has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) 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 as indicated, unless accomplished previously.

To prevent propagation of a fire through a gap (opening) in the fire wall as a result of an improperly sealed fire wall in the event of an engine fire, accomplish the following:

(a) Within 9 months after the effective date of this AD, modify the fire wall of each engine in accordance with Airbus Service Bulletin A320–78–1009, dated October 13, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27647 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–66–AD]

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that currently requires inspections to detect cracks in the area of the shock absorber attachment at the top of the barrel at the main landing gear (MLG), a measurement of the gap between the barrel and the shock absorber attachment; and corrective action, if necessary. That AD was prompted by a report of the rupture of the aft hinge arm of the left MLG barrel. This action would require a measurement of the gap between the washer and barrel of the MLG, eddy current inspections to detect cracking of the MLG barrel, correction of any discrepancy, and accomplishment

of certain other follow-on actions. Terminating actions would also be provided by this proposal. The actions specified by the proposed AD are intended to prevent collapse of the MLG.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; and Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 3, 1991, the FAA issued AD 91–22–52, amendment 39–8119 (57 FR 5372, February 14, 1992), applicable to all Airbus Model A310 series airplanes. That AD requires repetitive inspections of the main landing gear (MLG) to detect cracks in the area of the shock absorber attachment at the top of the barrel, and repair, if necessary; and a measurement of the gap between the barrel and the shock absorber attachment, and corrective action, if necessary. That action was prompted by a report of the rupture of the aft hinge arm of the left MLG barrel. The requirements of that AD are intended to prevent the collapse of the MLG.

Description of New Service Information

Since the issuance of that AD, Messier Bugatti has issued Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. This service bulletin describes procedures for:

1. Performing a measurement of the gap between the washer and barrel of the MLG;
2. Coating the MLG barrel and shock absorber connecting rod nut with a rubber sealant, for certain airplanes;
3. Performing a gap recovery procedure, and visual inspections to detect cracks of the MLG barrel, if the gap is equal to or greater than 1 mm (0.04 in.);
4. Replacing the barrel with a modified barrel, if any crack is detected, which eliminates the need for further inspections;
5. Removing the rubber sealant;
6. Performing an eddy current inspection to detect cracks of the MLG barrel; and
7. Performing repetitive gap measurements, repetitive eddy current and visual inspections; or installing a new bushing and replacement of the bronze washer, if no cracks are detected following accomplishment of the eddy current inspection, which terminates the need for repetitive inspections.

Accomplishment of the installation of a new bushing and replacement of the bronze washer, or the replacement of the barrel with a modified barrel will positively address the unsafe condition identified as the çollapse of the MLG.

The Direction Geńerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, as mandatory and issued French airworthiness directive (CN) 91–234–127(B)R2, dated December 22, 1993, in order to assure the continued airworthiness of these airplanes in France.

Description of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91–22–52 to completely revise the required actions.

Paragraph (a) of the proposed AD would require a measurement of the gap between the washer and barrel of the main landing gear (MLG).

Paragraph (b) of the proposed AD specifies actions that would be required if the gap measurement is within certain limits. These actions entail either no action, for certain airplanes; or coating the MLG barrel and shock absorber connecting rod nut with a rubber sealant, for other airplanes.

Paragraph (c) of the proposed AD specifies actions that would be required if the gap measurement is outside of certain limits. These actions entail performing a gap recovery procedure and conducting repetitive visual inspections to detect cracks of the MLG barrel.

Paragraph (d) of the proposed AD would require eddy current inspections to detect cracking of the MLG barrel. If no cracking is detected, operators would be required to perform various follow-on actions, which include repetitive gap measurements, eddy current inspections, and visual inspections; installation of a new bushing and

replacement of the bronze washer with a stainless steel washer would terminate these actions. If cracking is detected, the barrel would be required to be replaced with a modified barrel, which would terminate any further action required by the AD.

The proposed actions would be required to be accomplished in accordance with the Messier Bugatti Airbus A310 service bulletin described previously.

Differences Between the Proposed AD and Referenced Service Bulletin

The FAA has determined that installation of a new bushing on crack-free barrel having no oxidation of the cadmium plating may not ensure that the cadmium plating would not degrade and allow stress corrosion to occur. Table No. 3 of the referenced Messier Bugatti Airbus A310 service bulletin recommends that these new bushing be installed at the next overhaul. However, the FAA finds that, since overhaul schedules vary from operator to operator, the next overhaul for some operators may not occur for several years. Therefore, operators should note that the requirements of paragraph (d) of the proposed AD would differ from the recommendations of the service bulletin in that, in lieu of that bushing installation, it would require either repetitive gap measurements and eddy current inspections at intervals not to exceed 2 years, or installation of a new bushing and replacement of the bronze washer at the upper part of the MLG barrel with a stainless steel washer (which would terminate further inspections).

Economic Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed gap measurements, visual inspections, and other follow-on actions would require approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of these proposed actions on U.S. operators is estimated to be $5,400, or $300 per airplane, per cycle.

To accomplish the proposed eddy current inspections would requireapproximately 8 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of these proposed inspections on U.S. operators is estimated to be $8,640, or $480 per airplane, per inspection cycle.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators is estimated to be $14,040, or $780 per airplane, per cycle. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8119 (57 FR 5372, February 14, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 95–NM–66–AD. Supersedes AD 91–22–52, Amendment 39–8119.

Applicability: Model A310 series airplanes on which Airbus Modification 1033 (reference Airbus Service Bulletin A310–32–2066, Revision 1, dated January 30, 1992) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (e) 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 as indicated, unless accomplished previously.

To prevent collapse of the main landing gear (MLG), accomplish the following:

(a) Perform a measurement of the gap between the washer and barrel at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the service bulletin: Perform the measurement within 8 days after the effective date of this AD.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Perform the measurement within 3 months after the effective date of this AD.

(b) If the gap measurement is less than 1 mm (0.04 in.): Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the service bulletin: No further action is required by this paragraph for those airplanes.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight, coat the MLG barrel and shock absorber connecting rod nut with a rubber sealant in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(c) If the gap is equal to or greater than 1 mm (0.04 in.): Accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994.

(1) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a gap recovery procedure in accordance with paragraph 2.B.(5) of the Accomplishment Instructions of the service bulletin.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight after accomplishing the gap recovery procedure required by paragraph (c)(1) of this AD, coat the MLG barrel and connecting rod nut with a rubber sealant in accordance with the service bulletin.

(3) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a visual inspection to detect cracks of the MLG barrel, in accordance with paragraph 2.B.1 of the Accomplishment Instructions of the service bulletin.

(i) If no crack is detected: Repeat the visual inspection thereafter at intervals not to exceed 7 days until the eddy current inspection required by paragraph (d) of this AD is accomplished.

(ii) If any crack is detected: Prior to further flight, replace the MLG barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470–32–640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470–32–763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(d) Except as provided by paragraph (c)(3)(ii) of this AD (MLG barrel replacement): Following accomplishment of either paragraph (b) or (c) of this AD, and at the applicable times specified in Table No. 1 and Table No. 2 of Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994, remove the rubber sealant and perform an eddy current inspection to detect cracks of the MLG barrel in accordance with Table No. 3 of that service bulletin.

(1) If no crack is detected: At the times specified in Table No. 3 of the service bulletin, perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include repetitive gap measurements, repetitive eddy current and visual inspections, installation of a new bushing, and replacement of the bronze washer with a stainless steel washer.)

(i) However, in lieu of installing a new bushing on crack-free barrels having no oxidation of the cadmium plating at the next overhaul, as specified in the service bulletin, operators must either repeat the gap measurement and eddy current inspection at intervals not to exceed 2 years, or install a new bushing and replace the bronze washer at the upper part of the MLG barrel with a stainless steel washer, in accordance with the service bulletin.

(ii) After accomplishment of the installation of a new bushing (reference Messier Bugatti Service Bulletin 470–32–640) and the replacement of the bronze washer (reference Messier Bugatti Service Bulletin 470–32–763), no further action is required by this AD.

(2) If any crack is detected: Prior to further flight, replace the barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470–32–640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470–32–763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with the Messier Bugatti Airbus A310 Service Bulletin 470–32–726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27648 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–79–AD]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require repetitive operational tests of the valve limit switch of the propeller brake. This proposal also provides for an optional terminating action for the repetitive tests. This proposal is prompted by a report that when the propeller brake was not properly engaged the crew did not receive a ''PROP BRAKE'' warning due to a faulty valve limit switch. The actions specified by the proposed AD are intended to prevent a valve limit switch from failing to send input to the warning system; absence of a ''PROP BRAKE'' warning could result in the crew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning.

DATES: Comments must be received by December 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–79–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it has received a report indicating that the flightcrew of one airplane did not receive a ''PROP BRAKE'' warning when the propeller brake was not properly engaged. The ''PROP BRAKE'' warning indicates that there is insufficient [below 2,350 pounds per square inch (psi)] hydraulic pressure to engage the propeller brake. Investigation revealed that this failure was caused by a failure mode in the valve limit switch of the propeller brake system. If a valve limit switch is faulty, no input would be sent the warning system; this situation could result in the flightcrew being unaware that the propeller brake is not properly engaged and the propeller may turn without warning.

Saab has issued Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995, which describes procedures for repetitive operational tests of the valve limit switch of the propeller brake. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–064, Revision 1, effective date March 24, 1995, in order to assure the continued airworthiness of these airplanes in Sweden.

Saab has also issued Service Bulletin SAAB 340–61–033, dated March 6, 1995, which describes procedures for replacement of the propeller brake control unit having part number (P/N) HP1410100–3, –5, or –7 with a new propeller brake control unit having P/N HP1410100–10, and an operational test. Accomplishment of this replacement eliminates the need for the repetitive operational tests. The new propeller brake control unit has an improved low pressure valve limit switch installed in it to ensure that its inputs are received by the warning system. The LFV approved the technical content of this service bulletin.

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational tests of the valve limit switch of the propeller brake. The proposed AD also provides for the optional replacement of certain propeller brake control units with a new unit, which would constitute terminating action for the repetitive test requirements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed operational tests, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the actions that would be required by this AD on U.S. operators is estimated to be $1,380, or $60 per airplane, per test cycle. This total cost impact figure is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 95–NM–79–AD.

Applicability: Model SAAB SF340A series airplanes, having serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, having serial numbers 160 through 369 inclusive; on which the propeller brake system is connected; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (d) 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 as indicated, unless accomplished previously.

To prevent a valve limit switch from failing to send input to the ''PROP BRAKE'' warning system, which could result in the crew being

unaware that the propeller brake is not properly engaged and the propeller may turn without warning, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, perform an operational test of the valve limit switch of the propeller brake in accordance with Saab Service Bulletin SAAB 340–61–032, Revision 1, dated June 30, 1995. Repeat the test thereafter at intervals not to exceed 100 flight hours.

(b) Replacement of a propeller brake control unit having part number (P/N) HP1410100–3, –5, or –7 with a new propeller brake control unit having P/N HP1410100–10, and performance of an operational test, in accordance with SAAB Service Bulletin SAAB 340–61–033, dated March 6, 1995. constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a propeller brake control unit having P/N HP1410100–3; or any unit having P/N HP1410100–5 or –7 unless that unit has been modified in accordance with SAAB Service Bulletin SAAB 340–61–033, dated March 6, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 2, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–27646 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–37]

Proposed Amendment of Class E Airspace; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Alturas, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Alturas Municipal Airport, Alturas, CA.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–37, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–37.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Alturas, CA. The development of a GPS SIAP at Alturas Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 31 SIAP at Alturas Municipal Airport, Alturas, CA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 10034; 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 proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 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 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

AWP CA E5 Alturas, CA [Revised]

Alturas Municipal Airport, CA
(Lat. 41°28′59″ N, long. 120°33′55″ W)

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34′00″ N, long. 120°46′24″ W; to lat. 41°36′50″ N, long. 120°30′19″ W; to late.41°14′20″ N, long. 120°23′49″W; to lat. 41°11′35″ N, long. 120°39′34″ W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface beginning at lat. 41°22′10″ N, long. 120°58′04″ W; to lat. 41°28′13″ N, long. 120°44′38″ W; to lat. 41°19′03″ N, long. 120°41′50″ W; to lat. 41°15′00″ N, long. 120°51′04″ W, thence along the east edge of V–452 to the point of beginning and that airspace beginning at lat. 41°33′17″ N, long. 120°29′19″ W; to lat. 41°34′30″ N, long. 120°20′04″ W; to lat. 41°25′50″ N, long. 120°18′34″ W; to lat. 41°24′46″ N, long. 120°26′46″ W, thence to the point of beginning and that airspace beginning at lat. 41°22′30″ N, long. 120°58′00″ W; to lat. 41°41′00″ N, long. 120°41′00″ W, to lat. 41°41′00″ N, long. 120°21′00″ W; to lat. 41°14′00″ N, long. 120°16′00″ W; to lat. 41°02′00″ N, long. 120°38′30″ W, thence to the point of beginning.

Issued in Los Angeles, California, on October 27, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–27708 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–AWP–34]

Proposed Amendment of Class E Airspace; Winnemucca, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Winnemucca, NV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 14/32 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Winnemucca Municipal Airport, Winnemucca, NV.

DATES: Comments must be received on or before December 18, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. 95–AWP–34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, System Management Branch, Air Traffic Division at the above address

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AWP–34.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Winnemucca, NV. The development of a GPS SIAP at Winnemucca Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS RWY 14/32 SIAP at Winnemucca Municipal Airport, Winnemucca NV. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the

earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 10034; 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 proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 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 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

AWP NV E5 Winnemucca, NV [Revised]

Winnemucca Municipal Airport, NV
(Lat. 40°53′47″ N, long. 117°48′21″ W)
Winnemucca NDB
(Lat. 40°57′48″ N, long. 117°50′29″ W)
Battle Mountain VORTAC
(Lat. 40°34′09″ N, long. 116°55′17″ W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Winnemucca Municipal Airport and within 7.8 miles northwest and 4.3 miles east of the Winnemucca NDB 342° and 162° bearings, extended from 4.3 miles south to 8.7 miles north of the NDB. That airspace extending upward from 1,200 feet above the surface within 4.3 miles northeast and 9.6 miles southwest of the Winnemucca NDB 342° and 162° bearings, extending from the southeast edge of V–113 to 9.6 miles southeast of the NDB and within 4.3 miles each of the 162° bearing from the Winnemucca NDB, extending from the 9.6 miles southeast of the NDB to the north edge of V–32 and within 4.3 miles each side of the Battle Mountain VORTAC 296° radial extending from 10.4 miles to 43.4 miles northwest of the Battle Mountain VORTAC and that airspace bounded by a line beginning at lat. 40°33′00″ N, long. 117°52′00″ W; to lat. 40°37′30″ N, long. 117°47′00″ W; to lat. 40°34′00″ N, long. 117°46′00″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 41°05′00″ N, long. 118°12′30″ W to lat. 41°10′00″ N, long. 118°08′30″ W, to lat. 41°03′00″ N, long. 118°06′00″ W, thence to the point of beginning and that airspace bounded by a line beginning at lat. 40°46′00″ N, long. 117°39′00″ W, to lat. 40°37′00″ N, long. 117°35′00″ W, to lat. 40°34′30″ N, long, 117°34′30″ W, thence to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 27, 1995.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 95–27709 Filed 11–07–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM95–16–000]

Regulations for the Relicensing of Hydroelectric Projects

October 31, 1995.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Petition for rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing notification that, on July 10, 1995, the National Hydropower Association filed a petition for rulemaking that proposes revisions in the Commission's procedures for processing applications for new licenses (relicensing) of hydroelectric projects, the licenses for which are expiring. The Commission invites all interested persons to file comments on the petition as well as the potential applicability and usefulness in this proceeding of negotiated rulemaking procedures or other means of reaching consensual resolution of the issues presented by this filing.

DATES: Comments are due on or before January 5, 1996; reply comments are due on or before February 2, 1996.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, (202) 208–1269.

SUPPLEMENTARY INFORMATION: On July 10, 1995, the National Hydropower Association (NHA) filed a petition for rulemaking in the above-captioned docket. The petition proposes revisions in the Commission's procedures for processing applications for new licenses (relicensing) of hydroelectric projects, the licenses for which are expiring. NHA states that, in preparing the petition, it consulted extensively with the Hydropower Reform Coalition and numerous governmental and private entities.

The Commission invites all interested persons to file comments on the petition. The comments may address any and all substantive and procedural aspects of NHA's proposal. In addition, the Commission would welcome comment from NHA, the Hydropower Reform Coalition, governmental agencies, and all other interested persons with respect to the potential applicability to and usefulness in this proceeding of negotiated rulemaking procedures [1] or other means of reaching consensual resolution of the issues presented by this filing.[2]

Copies of NHA's petition are available for review in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments on the petition must be filed no later than January 5, 1996. Reply comments responsive to the initial comments may be filed no later than February 2, 1996. An original and 14 copies of comments should be filed with Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No.

[1] *See* the Negotiated Rulemaking Act of 1900, 5 U.S.C. § 561 *et seq.*

[2] *See e.g.*, Advance Notice of Proposed Rulemaking, Standards for Business Practices of Interstate Natural Gas Pipelines, Docket No. RM96–1–000, 73 FERC ¶ 61,104 (October 25, 1995).

RM95–16–000. For further information, contact Barry Smoler at (202) 208–1269.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27595 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC). Notice is also given of the location of the meeting. This meeting will be open to the public.

DATES: The meeting is scheduled for November 27–December 1, 1995. The meeting will begin at 1:30 p.m. on November 27th.

ADDRESSES: U.S. Department of Labor, DOL Academy, Room C–5320, Seminar Room 6, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: On May 11, 1994, OSHA announced that it had established the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) (59 FR 24389) in accordance with the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to resolve issues associated with the development of a Notice of Proposed Rulemaking on Steel Erection. Appointees to the Committee include representatives from labor, industry, public interests and government agencies.

SENRAC began negotiations in mid June, 1994, and has met nine times since. Initial meetings dealt with procedural matters, including schedules, agendas and the establishment of workgroups. The Committee established workgroups to address issues on Fall Protection, Construction Specifications and Scope. During subsequent meetings, foundations for negotiations were established and additional workgroups were formed to address more specific issues and develop a draft revision of subpart R.

The Committee last met on June 27–29, 1995, where consensus was expected to be reached on a proposed revision of subpart R. The Committee did reach agreement on major issues and most of the elements of the draft revision, however, after much deliberation, they could not come to an agreement on fall protection. OSHA determined that since the Committee made significant progress on the fall protection issue and agreed to other very important improvements to the existing standard, it would allow the Committee to convene a workgroup to resolve the fall protection issue. On July 26, 1995, a workgroup met in Philadelphia and developed recommended fall protection requirements for steel erection. Also, on September 19–21, 1995, workgroups met to address Slippery Surfaces, Scope, Training and Site-Specific Erection Plans. These workgroup recommendations will be presented to the full SENRAC Committee at the November meeting where it is expected that consensus will be reached on the complete draft proposal and an agreement in principle will be signed by each member. OSHA will then complete the preamble and prepare the document in the proper Federal Register format for publication as a proposed rule.

All interested parties are invited to attend the Committee meetings at the time and place indicated above. No advanced registration is required. Seating will be available to the public on a first-come, first-served basis. Persons with disabilities, who need special accommodations, should contact the Facilitator by November 20, 1995. During the meeting, members of the general public may informally request permission to address the Committee.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 219–7894. Copies of these materials may be obtained by sending a written request to the Facilitator.

The Facilitator, Philip J. Harter, can be reached at Suite 404, 2301 M Street, N.W., Washington, D.C. 20037; telephone (202) 887–1033, FAX (202) 887–1036.

For an electronic copy of this Federal Register notice, contact the Labor News Bulletin Board, (202) 219–4784 (callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits=8; Stop Bit=1 Voice phone (202) 219–8831); or OSHA's Webpage on Internet at http://www.osha.gov/ and http://www.osha-slc.gov/. For news releases, fact sheets, and other documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

Authority: This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.;* and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 2 day of November, 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–27700 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL113–1–6760b; FRL–5324–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On May 5, 1995, and May 31, 1995, the State of Illinois submitted a State Implementation Plan (SIP) revision request to the United States Environmental Protection Agency (USEPA) for lithographic printing as part of the State's 15 percent (%) Rate of Progress Plan control measures for Volatile Organic Matter (VOM) emissions. The USEPA proposes to approve Illinois' request. In the final rules section of this Federal Register, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments on this proposed rule must be received on or before December 8, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this Federal Register.

Dated: October 11, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–27610 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[NM–27–1–7208b; FRL–5322–7]

Approval and Promulgation of Implementation Plan for New Mexico—Albuquerque/Bernalillo County: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve a revision to the New Mexico State Implementation Plan (SIP) for the Albuquerque/Bernalillo County nonattainment area that contains transportation conformity rules. The transportation conformity SIP revision will enable the Albuquerque/Bernalillo County Air Quality Control Board to implement and enforce the Federal transportation conformity requirements at the local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The proposed approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is proposing to approve this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the proposed approval and other information are provided in the Final Rules Section of this Federal Register.

In the Final Rules Section of this Federal Register, the EPA is approving this transportation SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by December 8, 1995.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Air Pollution Control Division, Albuquerque Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 95–27683 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[TX–56–1–7209b; FRL–5322–5]

Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes to approve a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. The transportation conformity SIP revision will enable the State to implement and enforce the Federal transportation conformity requirements at the State level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The proposed approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revision submitted under 40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is proposing to approve this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the proposed approval and other information are provided in the Final Rules Section of this Federal Register.

In the Final Rules Section of this Federal Register, the EPA is approving this transportation SIP revision as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing, postmarked by December 8, 1995.

ADDRESSES: Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 20, 1995.

A. Stanley Meiburg,

Acting Regional Administrator (6RA).

[FR Doc. 95–27681 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[TN–KNOX–95–01; FRL–5327–9]

Clean Air Act Proposed Full Approval, or in the Alternative, Proposed Interim Approval of Operating Permits Program: Knox County Department of Air Pollution Control, Knox County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval, or proposed interim approval in the alternative.

SUMMARY: The EPA proposes full approval of the operating permits program submitted by the Department of Air Pollution Control located in the geographic area of Knox County, Tennessee. Alternatively, EPA proposes to grant interim approval if specified changes are not adopted prior to final promulgation of this rulemaking. Knox County's program was submitted for the purpose of complying with Federal requirements which mandate that states and local agencies develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by December 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of the Knox County submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Title V Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4150.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act (''the Act'') as amended by the 1990 Clean Air Act Amendments, EPA has promulgated rules on July 21, 1992 (57 FR 32250) which define the minimum elements of an approvable State/Local operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state or local agency operating permits programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states or authorized local agencies 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 or authorized local agencies develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within 1 year after receiving the submittal. If the State or local agency submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. Knox County provided EPA with additional materials in supplemental submittals dated August 24, 1994, January 6, 1995, January 19, 1995, February 6, 1995, May 23, 1995, and September 18 and 25, 1995. Because these supplements materially changed the County's submittal, EPA has extended the one-year review period.

The 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 2 years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permits program for that State or local agency.

II. Proposed Action and Implications

A. Analysis of Knox County's Submission

The Department of Air Pollution Control has requested full approval of its title V operating permits program, which covers the geographic area of Knox County within the State of Tennessee. EPA has concluded that the operating permits program submitted by the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Knox County Department of Air Pollution Control (''Knox County'' or ''the County'') meets the requirements of title V and part 70, and proposes to grant full/interim approval to the program. For detailed information on the analysis of the Knox County submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Program Support Materials

Pursuant to section 502(d) of the Act, each state or local agency must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. On November 12, 1993, the TDEC requested, under the signature of the Tennessee Governor's designee, approval of the Knox County operating permit program with full authority to administer the program in all areas of the County. The County has

delegated authority to implement part 70 under Tennessee law (Tennessee Code Annotated (TCA), section 68–25–115). The TDEC supplemented the program submittal on August 24, 1994, January 6 and 19, 1995, February 6, 1995, and May 23, 1995.

The Knox County submittal addresses, in section II entitled ''Complete Program Description,'' the requirements of 40 CFR 70.4(b)(1) by describing how the County intends to carry out its responsibilities under the part 70 regulations. EPA has deemed the program description to be sufficient for meeting the requirements of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each state or local authority is required to submit a legal opinion from the Attorney General (or the attorney for the state or local air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permits program. The Knox County Law Director submitted a Legal Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms, and relevant guidance to assist in the County's implementation of its permit program. Section V of the Knox County submittal includes the permit application forms, permit forms, and relevant guidance that the County intends to use for the implementation of its permit program. EPA has determined that the application forms meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

Knox County developed section 25.70 of the Knox County Air Pollution Control (K.C.A.P.C.) Regulations for the implementation of the substantive requirements of 40 CFR part 70. The County also incorporated K.C.A.P.C. sections 25.8, 30.0, 35.3, and 49.0 to implement other part 70 requirements. These rules, and several other rules and statutes providing for the County's permitting and administrative actions, were submitted by Knox County with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The Knox County program, in K.C.A.P.C. section 25.70.3, meets the requirements of 40 CFR 70.2 and 70.3 with regard to applicability. K.C.A.P.C. sections 25.70.4, 25.70.5, and 25.70.6, substantially meet the requirements of 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility) and complete permit application forms. In addition, the County's program provides for off-permit changes as described in 40 CFR 70.4(b)(14) in K.C.A.P.C. section 20.70.15. However, K.C.A.P.C. sections 25.70.5(c)(7) and 25.70.7(e)(2) do not reference emissions trading as required by 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). As a condition of full approval, Knox County has committed to rectify this lack of flexibility on emissions trading procedures. In a letter dated September 25, 1995, the County has proposed to incorporate the following language in K.C.A.P.C. section 25.70.7(e)(2)(i)(B): ''Notwithstanding paragraphs (e)(2)(i)(A) and (e)(3)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA. The Department may establish additional requirements for such permit conditions.''

Section 70.4(b)(2) requires States and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) 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 70.5(c) also 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. Under part 70, a state or local agency must request and EPA may approve as part of that state's or local agency's program any activities or emission levels that they wish to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAP, as reasonable.

The regulations addressing the insignificant activities list of Knox County can be found in K.C.A.P.C. section 25.70.12. This section provides for the exemption of certain emissions units, or pollutant-emitting activities from the title V permitting process. As required by 40 CFR 70.5(c), the County included language in this section to ensure that information needed to determine the applicability of, or to impose any applicable requirement, or to collect any permit fees is not excluded from the application.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation 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. 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. Knox County has not defined ''prompt'' in its program with respect to the reporting of deviations. The contents of K.C.A.P.C. section 25.70.6(a)(3)(iii)(B) requires ''prompt reporting of deviations from permit requirements . . .'', but does not specify what will be considered as prompt reporting. In a letter dated September 25, 1995, Knox County committed to include the following sentence in K.C.A.P.C. section 25.70.6(a)(3)(iii)(B): ''The term ''prompt'', in relation to the degree and type of permit deviations likely to occur, will be defined within each permit according to an EPA approved protocol, such as the EPA/Local Implementation Agreement.''

Knox County has the authority to issue variances from requirements imposed by State law under K.C.A.P.C. section 28.0. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. EPA has no authority to approve provisions of state law, such as the variance provision referred to, that are inconsistent with title V. 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 the 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.''

Knox County's program, in K.C.A.P.C. section 25.70.7, meets the permit processing requirements (including public participation and minor permit modifications) of 40 CFR 70.7. The permit review by EPA and affected States requirements of 40 CFR 70.8 are addressed in K.C.A.P.C. section 25.70.8.

In K.C.A.P.C. section 30.0, and in T.C.A. sections 68–210–112 and 68–210–116, the County substantially addresses the requirements of 40 CFR 70.11 with respect to enforcement authority. In response to the comments made by EPA during its substantial review of the County's program, on September 18, 1995, Knox County proposed revisions to the enforcement portion of its program submittal. Such changes are outline below.

In the area of civil penalty assessment, K.C.A.P.C. section 30.1(D) describes that the Director has the authority to assess civil penalties against any person. However, this item does not specify that the maximum fine shall be no less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3). Knox County has proposed a revision to K.C.A.P.C. section 30.1(D) to specify that the maximum fine shall be no less than $10,000 per day per violation.

Knox County does not have authority to restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare of the environment. The County has proposed to incorporate in section 30.1(G) the appropriate authority to satisfy the requirements of 40 C.F.R. 70.11(a)(1). Specifically, the provision will read as follows: ''The Director has the authority to restrain or enjoin immediately and effectively any person, by order or by suit in court, from engaging in any activity in violation of a permit or the Knox County Air Pollution Control Regulations that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment.''

The contents of K.C.A.P.C. section 30.1(F) give the Director in Knox County authority to ''cause to be instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any regulation promulgated by the Board or any order duly issued by the Director . . .''. It is not clear whether this can be done ''without the necessity of a prior revocation of a permit'' as required by 40 CFR 70.11(a)(2). As a condition of full approval, Knox County has committed to incorporate in section 30.1(F) the following statement: ''Such actions may be taken by the Director without the necessity of a prior revocation of any permit.''

EPA has determined that the proposed provisions submitted by Knox County on September 18 and 25, 1995, are acceptable. As condition of full approval, the County plans to expeditiously adopt the proposed change prior to EPA's final action on the County's program.

The aforementioned TSD contains the detailed analysis of the Knox County program and describes the manner in which the County's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit 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 of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

Knox County will collect permit and emission-based fees that are projected at $29.26 per ton of pollutant in 1995. Fees will be adjusted annually by the Consumer Price Index beginning in 1996. The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program for the years 1995 through 1999.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In its program submittal, Knox County demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in K.C.A.P.C. section 35.0, and in section 25.70.2 where the term ''applicable requirements'' is defined. EPA has determined that this legal authority is sufficient to allow the local agency to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Knox County is able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice 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 or local agencies 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), Knox County must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing local regulations.

EPA is aware that Knox County lacks a program designed specifically to implement section 112(g). However, the County does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the County to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these

measures into a Federally enforceable preconstruction permit. For this reason, EPA proposes to approve the use of Knox County's preconstruction review program found in K.C.A.P.C. section 25.1, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval 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 local regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the County to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state or local program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the County's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Knox County's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal rules as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

Knox County has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanism of adoption-by-reference. The details of the County's use of its delegation mechanism are set forth in a letter dated January 19, 1995, submitted by Knox County as a title V program addendum.

d. Commitment to Implement Title IV of the Act. Knox County adopted and incorporated by reference the provisions of 40 CFR part 72. On March 29, 1995, EPA published a Federal Register notice (60 FR 16127) notifying affected sources that the County's acid rain regulation was acceptable for purposes of administering an acid rain program and that the Knox County acid rain portion of the County's title V program has been established. Knox County has committed to incorporate by reference any new or revised provisions following promulgation by EPA.

B. Proposed Actions

1. Full Approval

The EPA is proposing full approval of the operating permits program submitted by Knox County on November 12, 1993, as supplemented on August 24, 1994, January 6 and 19, 1995, February 6, 1995, May 23, 1995, and September 18 and 25, 1995, if appropriate revisions to the County's program are adopted prior to final promulgation of this rulemaking. Knox County must make the following changes to receive full approval:

1. Knox County must revise the contents of K.C.A.P.C. section 25.70.7(e)(2)(i)(B) to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These requirements allow the permitting authority, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

2. Knox County must revise K.C.A.P.C. section 30.1(D) to specify that the maximum fine shall be no less than $10,000 per day per violation.

3. The County must revise K.C.A.P.C. section 30.1(G) to incorporate the requirements of 40 CFR 70.11(a)(1), with respect to the County's authority to restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare of the environment.

4. Knox County must revise K.C.A.P.C. section 30.1(F) to include the requirements of 40 CFR 70.11(a)(2) with respect to the authority ''to seek injunctive relief in court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of a permit.''

EPA has determined that the Knox County program is otherwise adequate to meet the minimum elements of an approvable operating permits program as specified in 40 CFR part 70.

2. Interim Approval

Alternatively, EPA is proposing to grant interim approval under 40 CFR 70.4(d) to the Knox County operating permits program if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because Knox County's program substantially meets the requirements of part 70 as discussed in section II(A) of this notice. The interim approval issues noted above will not prevent the County from issuing permits that are consistent with the part 70 program.

If EPA grants interim approval to the Knox County program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Knox County would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for Knox County. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if Knox County fails 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 Knox County then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Knox County has corrected the

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

deficiency by submitting a complete corrective program.

3. Other Actions

As discussed previously in section II.A.4.b., EPA proposes to approve Knox County's preconstruction review program found in K.C.A.P.C. section 25.1, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the County's program for receiving delegation of future section 112 standards and programs that are unchanged from Federal rules as promulgated. EPA also proposes to delegate all existing standards under 40 CFR parts 61 and 63 for both part 70 and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the Knox County submittal and other information relied upon for the proposed full/interim approval are contained in docket number TN–KNOX–95–01 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 December 8, 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 Reform Act of 1995

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 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, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–27697 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 70

[TN–CHAT–95–01; FRL–5328–1]

Clean Air Act Proposed Approval or, in the Alternative, Proposed Interim Approval of Operating Permits Program; Hamilton County, Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: EPA proposes full approval of the operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Bureau (''CHCAPCB'' or ''the County'') if certain changes are made prior to final EPA action on this program. Alternatively, EPA proposes to grant interim approval if the necessary changes are not made. CHCAPCB's operating permit program was submitted for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources in the state.

DATES: Comments on this proposed action must be received in writing by December 8, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of CHCAPCB's submittal and other supporting information used in developing the proposed full/interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, third floor, 345 Courtland Street NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4223.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (''the Act'') as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250) that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state and local operating permit programs. These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve to disapprove each program within one year after receiving the submittal. If the state's submission is materially changed

during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, 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 November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Board substantially meets the requirements of title V and part 70, and proposes to grant interim approval to the program or, in the alternative, to grant full approval to the program if specified changes are made, as will be discussed below. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Act, each state must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact meeting the requirements of title V of the Act. On November 22, 1993, EPA received the title V operating permit program submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Board. The State of Tennessee Department of Environment and Conservation requested, under signature of the Tennessee Governor's designee, approval of the CHCAPCB's operating permit program. The State supplemented the program submittal, on behalf of the County, on January 23, 1995, February 24, 1995, and October 13, 1995.

The program submittal includes a legal opinion from independent legal council for the Chattanooga-Hamilton County Air Pollution Control Board demonstrating adequate legal authority for the implementation and enforcement of the local part 70 program. The program submittal contains a description of how the CHCAPCB intends to implement the program consistent with the requirements of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401–7671q) and 40 CFR part 70. The program submittal also includes supporting documentation, such as evidence of the procedurally correct adoption of the permitting rules, permit application forms, and a detailed enforcement agreement with EPA. The submittal was determined to be administratively complete on January 24, 1995.

2. Regulations and Program Implementation

The Chattanooga-Hamilton County Air Pollution Control Board, operating under a certificate of exemption pursuant to Tennessee Code Annotated, Section 68–201–115, has authority to administer the operating permits program in all areas of Hamilton County, Tennessee, with the exception of Indian reservations and tribal lands. The CHCAPCB operating permits program is implemented and enforced through: (1) the Chattanooga Air Pollution Control Ordinance (within the incorporated municipality of the City of Chattanooga, Tennessee); (2) the Hamilton County Air Pollution Control regulation (in the unincorporated areas of Hamilton County, Tennessee); and (3) air pollution control ordinances prepared for and enacted in the incorporated municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside.

EPA has determined that the above regulations, constituting the Chattanooga-Hamilton County operating permits program, substantially meet the requirements of 40 CFR 70.2 and 70.3 for applicability; 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility); 40 CFR 70.7 and 70.8 for permit processing requirements (including public participation and permit modifications); and 40 CFR 70.11 for requirements for enforcement authority. The CHCAPCB's operating permit program closely follows the federal part 70 regulations. The TSD contains a detailed analysis of CHCAPCB's program and references the sections of the applicable local regulations that meet the required elements of an approvable program under 40 CFR part 70.

Under part 70, a state must request approval of, and EPA may approve as part of that state or local program, any activities or emission levels that the state wishes to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutants, as reasonable.

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 purposes of determining complete applications. Section 70.5(c) 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 7(c)(11) of the Hamilton County Regulation (section 4–56.11 of the Chattanooga Code) lists certain units or activities that, due to de minimis emission levels, need not be included in a part 70 permit application. CHCAPCB believes that these activities generally have a potential to emit below 5 tons per year of criteria or regulated hazardous air pollutants without size or production rate limitations. Section 7(c)(12) of the Hamilton County Regulation (section 4–56.12 of the Chattanooga Code) lists activities that are deemed to be insignificant due to size and production rate and that must be listed in a part 70 permit application but need not have emissions related information reported. CHCAPCB believes these activities have a potential to emit of less that 5 tons per year of any criteria or regulated hazardous air pollutant. CHCAPCB's regulations specify that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required.

CHCAPCB specified that the listed insignificant activities are expected to have emissions below five tons per year of criteria and regulated hazardous air pollutants. As stated above, EPA has accepted emissions thresholds of the lesser of 1000 pounds per year or section 112(g) de minimis levels for hazardous air pollutants. In addition, while CHCAPCB specified the 5 ton per year threshold as the criteria used to develop the insignificant activities list, no emission thresholds were specified in the regulations. The submittal also did not include any information on the estimated level of emissions from activities, nor a demonstration that these activities are not likely to be subject to an applicable requirement.

EPA has reviewed CHCAPCB's significant activities lists and is concerned that several of the activities

may conflict with applicable requirements and may not have emissions levels that are sufficiently below the applicability thresholds to assure that no unit potentially subject to an applicable requirement is left off a title V application, especially with respect to emissions of hazardous air pollutants. EPA has identified these activities of concern in the technical support document available in the docket for this rulemaking.

As a condition of full approval, CHCAPCB must remove, clarify, or limit the activities in question and/or document that they are not potentially subject to an applicable requirement. In revising the insignificant activities lists, CHCAPCB must consider emissions of all regulated air pollutants, not just criteria and hazardous air pollutants. In addition, CHCAPCB must establish emission threshold criteria that will not conflict with section 112(g) de minimis levels for hazardous air pollutants. As stated above, EPA has accepted emissions thresholds of the lesser of 1000 pounds per year or section 112(g) de minimis levels, as reasonable.

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the applicable requirements and type of deviation likely to occur. 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. 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. CHCAPCB has not defined ''prompt'' in its program, but rather intends to require the prompt reporting of deviations in the individual permits.

The Chattanooga-Hamilton County Air Pollution Control Board has the authority to issue variances from requirements imposed by local law. Section 4–21 of the Chattanooga ordinance, and the corresponding chapters of the Hamilton County and local municipalities' regulations, allow CHCAPCB discretion to grant relief from compliance with local requirements for up to one year. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of the local program.

EPA has no authority to approve provisions of local law, such as the variance provision referred to, that are inconsistent with title V. 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 the 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.''

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit 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 of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The Chattanooga-Hamilton County Air Pollution Control Board has elected to adopt a presumptive minimum fee of $29.32 per ton for each annual accounting period (adjusted by the CPI as required). The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program. The program activities that will constitute CHCAPCB's title V operating permit program are consistent with the activities described in 40 CFR 70.9(b)(1). Section 4–60 of the Chattanooga Code provides that an annual accounting of the operating permit program will be performed to ascertain whether the annual fees collected are sufficient to support the direct and indirect costs of the title V program.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation. In its program submittal, Chattanooga-Hamilton County demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in regulatory provisions defining ''applicable requirements'' and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. In addition, this definition includes language that clarifies that in the period after federal adoption, and before local adoption, the part 70 permit will specify that the source is subject to the cited federal standard. EPA is interpreting the above legal authority to mean that Chattanooga-Hamilton County is able to carry out all section 112 activities with respect to part 70. For further discussion, please refer to 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. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice 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), Chattanooga-Hamilton County must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the

Federal section 112(g) rule and adoption of implementing local regulations.

EPA is aware that Chattanooga-Hamilton County lacks a program designed specifically to implement section 112(g). However, Chattanooga-Hamilton County does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the County to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Chattanooga-Hamilton County's preconstruction review programs found in Section 4–8 of the Chattanooga Code, and the corresponding sections of the Hamilton County and local municipalities' regulations, under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state and local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval 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 local regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for Chattanooga, Hamilton County, and the affected municipalities to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(1)(5) requirements for approval of a state program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(1)(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 also proposes to grant approval, under section 112(1)(5) and 40 CFR 63.91, of Chattanooga-Hamilton County's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated and to delegate existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources. This program for delegation applies to both existing and future standards, and to part 70 and non-part 70 sources. CHCAPCB has informed EPA that it intends to accept delegation of section 112 standards through incorporation by reference. The details of the CHCAPCB's delegation mechanism is set forth in a letter to EPA, dated October 19, 1995, and is contained in the docket for this action

d. Commitment to Implement Title IV of the Act. On March 29, 1995, EPA published a Federal Register Notice (60 FR 16127) notifying affected sources that the CHCAPCB's acid rain program had been established and that CHCAPCB's regulations are acceptable for the purposes of administering an acid rain program. Chattanooga-Hamilton County has committed to incorporate by reference, following promulgation by EPA, any new or revised provision of 40 CFR part 72 or provisions implementing sections 407 and 410 of the Act.

B. Proposed Actions

1. Full Approval

The EPA proposes to fully approve the operating permits program submitted to the EPA by the State of Tennessee of behalf of the Chattanooga-Hamilton County Air Pollution Control Board on November 22, 1995, if certain changes are made to the program and submitted to EPA prior to EPA's final action on this proposal. As a condition of full approval, CHCAPCB must remove, clarify, or limit certain insignificant activities and/or document that they are not potentially subject to an applicable requirement. EPA has determined that the program is otherwise adequate to meet the minimum elements of a local operating permits program as specified in 40 CFR part 70.

2. Interim Approval

EPA is proposing to grant interim approval to the operating permits program under 40 CFR 70.4(d) if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because CHCAPCB's permit program substantially meets the approval process and requirements of part 70, as discussed in section II(A) of this notice. The problems noted above will not prevent CHCAPCB for issuing permits that are consistent with part 70 on an interim basis.

If EPA grants interim approval to CHCAPCB, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, Hamilton County would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal operating permit program for the County. Permits issued under a program with interim approval are fully effective with respect to part 70 and the three-year time period for processing the initial permit applications will begin upon the effective date of final interim approval.

Following the granting of final interim approval, if the Chattanooga-Hamilton County Air Pollution Control Board fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If the Chattanooga-Hamilton County Air Pollution Control Board then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the Chattanooga-Hamilton County Air Pollution Control Board has corrected the deficiency by submitting a complete corrective program.

3. Program for Straight Delegation of Section 112 Standards

As discussed previously in section II.A.4.b., EPA proposes to approve Chattanooga-Hamilton County's preconstruction review program, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a local rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(1)(5) and 40 CFR 63.91 to CHCAPCB for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. EPA also proposes to delegate all existing standards under 40

CFR part 61 and 63 both part 70 and non-part 70 sources.

4. Other Implications

The scope of Chattanooga-Hamilton County's part 70 program that EPA proposes to approve, or interimly approve in the alternative, in this notice would apply to all part 70 sources (as defined in the approved program) within Hamilton County, 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. 24, 1994); 58 FR 54364 (Oct. 21, 1993).

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed full/interim approval. Copies of CHCAPCB's submittal and other information relied upon for the proposed alternatives of full approval and interim approval are contained in docket number TN–CHAT–95–01, 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 full/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. EPA will consider any comments received by December 8, 1995.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit 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 Reform Act of 1995

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 action promulgated today does not include a Federal 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. 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.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 31, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–27698 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN 0905–AE52

National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table—II

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of proposed rulemaking; findings.

SUMMARY: The Secretary has made findings as to certain illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by regulation under section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114 (c) and (e) of the Public Health Service Act (the Act).

These proposed regulations would have effect only for petitions for compensation under the National Vaccine Injury Compensation Program (VICP) filed after the new regulations become effective.

DATES: Comments must be submitted on or before May 6, 1996. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the Federal Register to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Research and Planning, BHPr, Room 8–67, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer, Division of Vaccine Injury Compensation, BHPr, (301) 443–4198 or David Benor, Senior Attorney, Office of the General Counsel, (301) 443–2006.

SUPPLEMENTARY INFORMATION: On August 14, 1992, the Secretary published in the Federal Register (57 FR 36878) findings as to the illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposed to amend the Vaccine Injury Table (Table) by regulation pursuant to section 312 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act (the Act). After consideration of comments on the proposed rule, the Secretary published a final rule in the Federal Register on February 8, 1995 (60 FR 7678). The Secretary indicated in the preamble to that rule that further modifications to

the Vaccine Injury Table would be made as new scientific evidence became available regarding the causal relationship between certain vaccines and various adverse events. Pursuant to section 313 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Act, the Secretary arranged for a second study, again to be conducted by the Institute of Medicine (IOM) of the National Academy of Sciences. This study, entitled Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality, covers those vaccines not addressed in the IOM's section 312 Report. (Institute of Medicine. Stratton KR, Howe CJ, Johnston RB, eds. Adverse Events Associated with Childhood Vaccines: Evidence Bearing on Causality. Washington, D.C. National Academy Press; 1994) This Notice of Proposed Rulemaking (NPRM) addresses modifications to the Vaccine Injury Table as a result of this latest IOM report.

The National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99–660 (42 U.S.C. 300aa–10 et seq.), established a Federal compensation program for persons thought to be injured by vaccines. Petitions for compensation under this Program are filed with the United States Court of Federal Claims, with a copy served on the Secretary, who is denominated the ''Respondent.'' The Court, acting through Special Master, makes findings as to eligibility for, and amount of, compensation.

In order to gain an award under this program, the petitioner must establish a vaccine-related injury or death, either by showing an event which is presumed to be caused by a vaccine or by proving causation in fact. In some cases, the petitioner may simply demonstrate the occurrence of what has been referred to as a ''Table injury.'' That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in section 2114(a) of the Act (42 U.S.C. 300aa–14(a))—the ''Vaccine Injury Table''—corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, the Table injury was in effect presumed to have been caused by the vaccination, and the petitioner was automatically entitled to compensation (assuming that various jurisdictional requirements were satisfied), *unless* it was affirmatively shown that the injury was caused by some factor other than the vaccination (see secs. 2111(c)(1)(C)(i), 2113(a)(1)(B)), and 2114(a) of the Act). Congress recognized that the Table initially set forth in the statute inevitably would compensate some individuals whose injuries were not actually caused by the vaccine. Congress was willing to accept some such inaccuracy for simplicity's sake, and in order to ensure compensation of most persons actually injured by the enumerated vaccines.

The legislative history states:

> ''The Committee recognizes that there is public debate over the incidence of illnesses that coincidentally occur within a short time of vaccination. The Committee further recognizes that the deeming of vaccine-relatedness adopted here may provide compensation to some children whose illness is not, in fact, vaccine-related. The Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines * * * may propose to revise the Table, as provided below in Section 2114 [Initial Table]. Until such time, however, the Committee has chosen to provide compensation to all persons whose injuries meet the requirements of the petition and the Table and whose injuries cannot be demonstrated to be caused by other factors.'' [H.R. Rept. 99–908, Part 1, September 26, 1986, page 18 (or as found in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6359)].

Since the enactment of the statute, there have been serious concerns about the degree to which the assumptions underlying the Vaccine Injury Table were founded in science, and concerns that substantial numbers of petitions were being compensated inappropriately because they are being compensated for non-vaccine-related injuries. Indeed, when it first enacted the statute creating this Program, Congress mandated reviews to be undertaken by the IOM with the express purpose of providing a better scientific rationale for any presumptions of vaccine causation. Under section 312 of Pub. L. 99–660, Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines. The 312 Report is discussed extensively in the Final Rule published on February 8, 1995 (60 FR 7678). Under section 313 of Pub. L. 99–660, Congress mandated that the IOM conduct a similar review regarding the risks associated with those pediatric vaccines not covered by the 312 Report.

Section 313 Report

The Institute of Medicine conducted this second review, and released its report in late 1993 (hereinafter ''313 Report''). The committee charged with undertaking this review consisted of fourteen members with expertise in the following fields: immunology, pediatrics, internal medicine, infectious diseases, neurology, virology, microbiology, epidemiology, and public health. The committee met six times over the course of 18 months, and reviewed more than 7,000 abstracts of scientific and medical studies. They read over 2,000 published books and articles, analyzed information from the U.S. Public Health Service Vaccine Adverse Events Reporting System, and considered additional material submitted by interested parties. The committee did not perform any original research. *See* 313 Report, Executive summary, pp. 3–4.

The IOM Committee undertook the task of judging whether, based on available evidence, a causal relationship exists between each adverse event examined and exposure to vaccines against the following diseases: diphthteria, measles, mumps, poliomyelitis, tetanus, hepatitis B, and hemophilus influenzae type b (Hib). Vaccines for hepatitis B and hemophilus influenzae type b (Hib) were not mandated by Congress to be part of the section 313 study; however, because these vaccines are now mandated for inclusion in the Vaccine Injury Compensation Program, the Secretary asked the IOM to address these vaccines as well. See section 2114(e) of the Act, as added by section 13632(a)(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Pub. L. 103–66, which is discussed fully below.)

As with the 312 Report, the IOM used a classification system to categorize their conclusions about the strength of a causal association. These categories are as follows:

1. No evidence bearing on a causal relation.
2. The evidence is inadequate to accept or reject a causal relation.
3. The evidence favors rejection of a causal relation.
4. The evidence favors acceptance of a causal relation.
5. The evidence establishes a causal relation.

After release of the IOM 313 Report in December 1993, the Advisory Commission on Childhood Vaccines (ACCV) recommended that the Secretary convene a task force of experts to review the conclusions of the IOM committee and to consider appropriate changes to the Vaccine Injury Table. Accordingly, on March 15, 1994, an ad hoc subcommittee of the National Vaccine Advisory Committee (NVAC) (see section 2105 of the Act) met to review the 313 Report. This subcommittee meeting included members of the NVAC, representatives from the

Advisory Committee on Immunization (ACIP), the ACCV, the Food and Drug Administration's Vaccine Related Biological Products Advisory Committee, the Academy of Pediatrics Committee on Infectious Diseases (the ''Redbook'' committee), and appropriate Public Health Services (PHS) staff. Where appropriate, the subcommittee also solicited the views of experts in the area of childhood vaccines. The subcommittee concurred with the IOM's conclusions in almost all cases. The subcommittee did not agree with the IOM's conclusions in six specific areas which will be discussed, as appropriate, in the individual vaccine sections below.

Following the NVAC Subcommittee's review, the ACCV, whose membership, by statutory directive, reflects a variety of views relating to childhood immunizations (section 2119 of the Act), considered the proposed changes to the Vaccine Injury Table at its September and December 1994 meetings. The ACCV deliberations included public policy considerations, whereas the NVAC charge was to consider only the scientific issues raised by the existing Table, the recent IOM report, and other scientific information.

The Secretary has examined the recommendations of the NVAC Subcommittee, and of the ACCV, and proposes that the Table set forth at 42 CFR 100.3 be revised as described below. As described above, the process for developing proposals for changing the Table in response to the 313 report is very similar to that undertaken with respect to the 312 Report. In both cases, the Department solicited the views of the two key advisory committees that are charged with making recommendations to the Department regarding vaccine safety and the vaccine compensation program. Making recommendations to change the Table involves the difficult task of balancing scientific concerns and public policy concerns. The Department's overall goal, consistent with Congress' intent in enacting the VICP, is to provide just and fair compensation to those individuals who experience adverse events that can reasonably be determined to have been caused by the covered vaccines. The Department views its role as requiring consideration of public policy concerns, as well as the purely scientific data, in translating these determinations into decisions to change the Table. Another important consideration in proposing changes to the Table is the need to make the Table as easy to understand and as clear as possible. With this goal in mind, the Department is proposing to revise the Qualifications and Aids to Interpretation which may be used by the Special Masters in understanding when a particular set of symptoms is consistent with a particular Table injury. The Department welcomes comments regarding the clarity of the proposed Qualifications and Aids to Interpretation. As provided in section 2114(c)(4), the new table will apply only to petitions filed under the Program after the effective date of the final regulation.

In addition, this NPRM includes changes to the Table based on the requirements of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, which required, in part, that the Secretary amend the Table to include additional vaccines which have been recommended for routine administration to children. Specifically, this Act added a new section 2114(e) to the National Childhood Vaccine Injury Act of 1986. This section now reads as follows:

(e) ADDITIONAL VACCINES—

(1) VACCINES RECOMMENDED BEFORE AUGUST 1, 1993—

By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) to include—

(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention (CDC) before August 1, 1993, for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(2) VACCINES RECOMMENDED AFTER AUGUST 1, 1993—When after August 1, 1993, the Centers for Disease Control and Prevention (CDC) recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) to include—

(A) vaccines which were recommended for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

Based on the requirements of this section, the Department proposes to add to the Table hepatitis B and Hib vaccines. In addition, in order to create an efficient and streamlined method of adding additional vaccines to the Table, as required by section 2114(e)(2) above, the Department proposes to add to the Table now a general category for any new vaccine that in the future is recommended by CDC for routine administration to children, upon indication to the Secretary that a particular vaccine has been recommended. Accordingly, once Congress enacts an excise tax to cover that vaccine, the vaccine will be covered under the VICP. Until specified injuries are added to the Table through the rulemaking process, individuals who receive newly recommended vaccines will not receive a presumption of causation, but will instead be eligible to receive compensation upon proving causation in fact. Consistent with the general process for amending the Table, once the Department determines that specific adverse events have been associated with newly recommended vaccines, the Department will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation.

Based on the requirements of the Administrative Procedure Act, the Department publishes a Notice of Proposed Rulemaking in the Federal Register before a regulation is promulgated. The public is invited to submit comments on this proposed rule. In addition, a public hearing will be held for this proposed rule. After the public comment period has expired, the Department will publish the final rule in the Federal Register. The Comments received on the proposed rule and the Department's responses to the comments will be addressed in the preamble to the final regulation.

Guidelines

Section 313 requires that the Secretary establish guidelines based on the results of the 313 Report ''respecting the administration'' of the vaccines that were reviewed, which guidelines shall include:

''(i) the circumstances under which any such vaccine should not be administered,

(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.''

The establishment of these guidelines will be undertaken as a separate activity from this rulemaking.

Findings

Section 313, unlike section 312, does not require that the Secretary make specific findings as to the ''illnesses or conditions * * * that can reasonably

be determined in some circumstances to be caused or significantly aggravated'' by the vaccines under review, or ''the circumstances under which such causation or aggravation can reasonably be determined to occur.'' Nevertheless, the Department has concluded that these determinations are the appropriate framework for making changes to the Table as a result of the 313 Report. Accordingly, the findings below and the proposed Table that follows are based on these determinations. For some Table changes, the ''circumstances under which * * * causation or aggravation can reasonably be determined to occur'' are reflected in the terms of the Table itself (e.g., vaccine strain polio infection in immunodeficient individuals); for others, the circumstances are reflected in the Qualifications and Aids to Interpretation that accompany the Table (e.g., thrombocytopenic purpura for vaccines to prevent measles).

The Secretary makes the following findings:

1. The scientific evidence favors acceptance of a causal relationship between vaccines containing tetanus toxoid and brachial neuritis.

2. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines containing tetanus toxoid and Guillain Barre Syndrome (GBS). While there may be a causal relationship in extremely rare cases, the Secretary is unable to identify the circumstances in which the vaccine causes the condition.

3. The scientific evidence favors rejection of a causal relationship between vaccines containing tetanus toxoid and encephalopathy.

4. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines containing tetanus toxoid and residual seizure disorder.

5. The scientific evidence indicates a causal relationship between vaccines to prevent measles and (a) thrombocytopenic purpura and (b) measles vaccine-strain viral infection in immunodeficient individuals.

6. The scientific evidence is insufficient to accept or reject a causal relationship between vaccines to prevent measles and residual seizure disorder.

7. The scientific evidence is insufficient to accept or reject a causal relationship between polio live virus (OPV) and Guillain-Barre Syndrome (GBS).

8. The scientific evidence indicates a causal relationship between OPV and vaccine-strain polio viral infection.

9. The scientific evidence indicates a causal relationship between hepatitis B vaccine and anaphylaxis.

10. The scientific evidence favors acceptance of a causal relationship between Hib vaccine (unconjugated, polyribosylribitol phosphate (PRP) vaccine only) and early-onset Hib disease.

Discussion of Proposed Table Changes

The following proposed revision of the Table and the related Qualifications and Aids to Interpretation takes into account the recommendations of the ACCV and the NVAC Subcommittee. These two outside reviewing bodies have based their recommendations primarily on the IOM Report as well as other relevant scientific information. Set forth below is a discussion of each proposed change to the Table, including an explanation of the rationale for the change. Where the Department proposes to amend the Table in a manner inconsistent with the recommendations of the ACCV, there is specific discussion of the basis for such proposal; for all other proposed changes, the ACCV concurred with the proposals.

The Department notes that the removal of a condition from the Table, or the inclusion of a revised definition thereof, will not necessarily result in compensation being denied where it would previously have been awarded. Rather, the result will be that a presumption of causation will no longer apply. Petitioners may still prevail by providing proof of causation in fact.

The Department is proposing to use different categories for the Table itself from those set forth in the initial statutory Table or in the revised Table set forth in the regulations at 42 CFR 100.3. Rather than combine different vaccines, such as DTP and DT in the same category, the Department is proposing to identify groups of vaccines by a primary antigen. Thus, one category will be vaccines to prevent pertussis, which would include P, DTP, DTaP, and other combination vaccines one of whose components is pertussis. Similarly, vaccines to prevent rubella would include MMR, MR, and R.

I. Tetanus Toxoid-Containing Vaccines

A. Guillain-Barre Syndrome

Guillain-Barre syndrome, or acute inflammatory demyelinating polyneuropathy, is a well-described neurologic disorder marked by an initially progressive motor paralysis. While the illness may be life-threatening, recovery is usually complete after weeks or months. Based on a great deal of data gathered since the entity was clearly delineated 75 years ago, it is thought that this disorder is immune-mediated and targets peripheral nerves.

Over half of all patients with GBS have a history of a preceding acute infectious illness, either respiratory or gastrointestinal, in the 1 to 4 weeks prior to the onset of neuropathic symptoms. Several infectious agents, including both bacterial (e.g., Campylobacter jejuni and Mycoplasma pneumoniae) and viral [e.g., Epstein-Barr virus, human immunodeficiency virus (HIV), and cytomegalovirus] ones, are associated with GBS.

Vaccinations in general are infrequent antecedent events in patients with GBS, probably occurring in less than 1 to 5 percent of all cases. GBS is known to occur following the administration of rabies vaccine produced from the nervous tissue of infected animals, and there were more than expected GBS cases in this country following the massive effort in 1976–77 to immunize the populace against a threatened pandemic of swine influenza. While the experience with rabies and swine influenza vaccines is well-documented, a causal relation, if one exists, between tetanus toxoid and GBS is not so self-evident. The Institute of Medicine did conclude that the evidence favors a causal relation between tetanus toxoid and GBS, and by extension that it favors a causal relation between vaccines containing tetanus toxoid, DT, Td, DTP and DTaP. A subcommittee of the National Vaccine Advisory Committee was divided on the question of causality, voting by only a 6 to 5 margin to concur with the IOM's conclusion as to causality between tetanus toxoid-containing vaccines and GBS; the subcommittee recommended unanimously that GBS not be added to the Vaccine Injury Table.

The IOM based its Category 4 conclusion (''The Evidence Favors Acceptance of a Causal Relation'') on an assessment of biologic plausibility and on case reports. One case in particular, that of a 42-year-old man who experienced three separate bouts of a GBS-like illness after tetanus immunizations and later had further relapses without antecedent immunizations of any sort, was relied on very heavily as evidence that there was more than a theoretical possibility of GBS brought on by tetanus immunizations (Pollard JD, Selby G. Relapsing neuropathy due to tetanus toxoid: report of a case. Journal of Neurological Science 1978;37:113–125). The significance of this case and other evidence was debated by the NVAC

Subcommittee before it made its recommendations.

CDC presented data to the NVAC Subcommittee from epidemiologic studies on this issue available since the IOM review. These large population studies showed that there was no increased risk of GBS after tetanus toxoid-containing vaccines in either adults or children. These findings suggest that while certain individuals may have a predilection for GBS after various triggers (including vaccination), such individuals are extremely rare.

The ACCV recommended by a 5 to 4 vote to add GBS to the Table as a recognized Table injury for tetanus toxoid-containing vaccines and that the Aids to Interpretation be designed to exclude from the presumption of causation cases which are not vaccine-related. There are no biologic markers or other means, however, to distinguish the very rare cases of vaccine-related GBS from the far more common cases of GBS due to other causes. As noted above, the one case primarily relied upon by the IOM was one which, due to the multiple occurrences of GBS following vaccination, could be found compensable under the causation in fact standard. Indeed, the VICP has compensated one individual for GBS following receipt of tetanus toxoid vaccine based on this causation in fact approach.

The Department has evaluated the comments of the NVAC Subcommittee and of the ACCV and has determined not to propose the addition of GBS to the Table. While the isolated cases of GBS following tetanus toxoid-containing vaccines do indicate biologic plausibility for causation, the results of CDC studies demonstrate that there is no measurable increase in risk of this condition following vaccination. (Chen R, Kent J, Rhodes P, Simon P, Schonberger L. Investigation of a possible association between influenza vaccination and Guillain-Barre syndrome in the United States, 1990–1991 (abstract); Post Marketing Surveillance 1992; 6:5–6.) Indeed, the IOM noted that ''no estimate of incidence or relative risk is available. It would seem to be low.'' (IOM Report, p. 89.) Thus, to add this condition to the Table would almost certainly result in compensating an inordinate number of non-vaccine-related cases for the extremely rate vaccine-related case. The Department has concluded that the condition should not be given a presumption of causation but should be addressed instead under the causation in fact standard.

B. Brachial Neuritis

Brachial neuritis, alternatively known as brachial plexus neuropathy and by other names, such as neuralgic amyotrophy, was first linked to vaccination or administration of antiserum a half century ago. It has also been reported after various infections and concurrent with other diseases, as well as after trauma, but in the majority of cases there is no history of antecedent illness or immunization. This acute onset peripheral nerve disorder usually begins with a deep, often severe aching pain in the shoulder and upper arm. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. Recovery is complete in most cases, though it may require more than a year for full return of function. The IOM concluded that while the evidence is inadequate to accept or reject a causal relation between tetanus toxoid, DT, or Td and peripheral neuropathy (other than those caused by direct intraneural injection), there is biologic plausibility that vaccines could cause brachial neuritis. Taking into account biologic plausibility along with published case reports and uncontrolled observational studies (Tsairis P, Dyck PJ, Mulder DW. Natural history of brachial plexus neuropathy: report on 99 patients. Archives of Neurology 1972; 27:109–117) (Beghi E, Kurland LT, Mulder DW, Nicolosi A. Brachial plexus neuropathy in the population of Rochester, Minnesota, 1970–1981. Annals of Neurology 1985; 18:320–323) of brachial neuritis after receipt of tetanus toxoid, from which a relative risk on the order of 5 to 10 was estimated, the IOM viewed the evidence as favoring acceptance of a causal relation between all tetanus toxoid-containing vaccines and brachial neuritis.

A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusion as to causality and recommended the addition of this condition to the Vaccine Injury Table. Citing the rarity of brachial neuritis in children, this panel left open the possibility of including an age-range qualifier to its recommendation that the condition be added to the Table.

The series reported in 1972 by Tsairis and colleagues included a case of brachial neuritis in a 3-month-old infant 3 days after a DTP immunization; and in 1973, Martin and Weintraub reported a case of brachial neuritis in a 5-month-old boy 2 days after he received in the thigh his first does of DTP, with resolution of the neuritis within 48 hours. (Martin GI, Weintraub MI. Brachial neuritis and seventh nerve palsy: a rare hazard of DPT vaccination. Clinical Pediatrics 1973; 12:506–507.) In view of these reported cases of brachial plexopathy in infants after receipt of tetanus toxoid-containing vaccines (DTP), and a paucity of data about incidence according to age, the Department has decided to add brachial plexopathy to the Vaccine Injury Table without any age-range qualifier.

Based on the published literature and case reports, the Department is proposing a time of onset between 2 and 28 days. The proposed Qualifications and Aids to Interpretation are designed to define this condition under new paragraph (b)(7) and to rule out other conditions for which there has been no finding of a causal relation to the vaccine.

C. Encephalopathy

The IOM concluded that the evidence favors rejection of a causal relation between DT, Td, or tetanus toxoid and either acute or chronic encephalopathy. A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusion as to causality and recommended the removal of this condition from the Vaccine Injury Table. The ACCV concurred. Accordingly, the Department proposes to delete this condition from the Table.

D. Residual Seizure Disorder

The Department has already taken regulatory action, based on the section 312 review, to delete the condition of residual seizure disorder (RSD) from the Table for vaccines containing tetanus toxoid. See 42 CFR 100.3, as amended at 60 FR 7694. The additional findings from the section 313 Report provide further support for this action. Accordingly, the Department is setting forth a discussion of the additional findings from the IOM that are relevant to this decision.

The Institute of Medicine concluded that the evidence favors rejection of a causal relation between DT and infantile spasms, and is inadequate to accept or reject a causal relation between DT and residual seizure disorder other than infantile spasms. The IOM also viewed the evidence as inadequate to accept or reject a causal relation between tetanus toxoid or Td and residual seizure disorder. These conclusions paralleled its earlier conclusions about infantile spasms (''favors rejection of a causal relation'') and residual seizure disorder (''inadequate to accept or reject a causal relation'') for DTP.

While the IOM may not have felt that it had adequate evidence to reject a

causal relationship between tetanus toxoid, DT, or Td and residual seizure disorder, except in the special case of infantile spasms, it cited no evidence suggestive of a causal relationship. Indeed, the evidence adduced, which included data from three uncontrolled observational studies, could reasonably be interpreted as favoring rejection of a causal relationship. (Pollock TM, Morris J. A 7-year survey of disorders attributed to vaccination in North West Thames region. Lancet 1983; 1:753–757) (Pollock TM, Miller E, Mortimer, JY, Smith G. Symptoms after primary immunization with DTP and with DT vaccine. Lancet 1984; 2:146–149) (Pollock TM, Miller E, Mortimer JY, Smith G. Post-vaccination symptoms following DTP and DT vaccination. Developments in biological standardization. 1985; 61:407–410) (Hirtz DG, Nelson KB, Ellenberg JH. Seizures following childhood immunizations. Journal of Pediatrics 1983; 102:14–18)

All three studies reported on relatively large numbers of children (>200,000 in all) and did identify some who did experience seizures sometime after primary or booster DT immunizations. Of those who experienced seizures, almost all their seizures either: (1) Were isolated events (i.e., did not experience further seizures before observational period ended); (2) occurred in the face of fever or intercurrent illness and were without manifest neurologic residua; (3) occurred well after the receipt of vaccine (e.g., two individuals with convulsions at 22- and 24-days post-immunization, respectively); (4) happened in the face of a significant prior neurologic history (e.g., ''several months earlier he had sustained a skull fracture in a car accident and had been in a coma but had apparently recovered''); or (5) took place under some combination of these special circumstances. Of the Hertfordshire experience reported by Pollock et al. (1984 and 1985), the IOM said, ''That study did not show any evidence for residual seizure disorder de novo following receipt of DT.''

Clearly, whether the evidence is interpreted as inadequate to decide for or against a causal relation between these tetanus toxoid-containing vaccines (i.e., T, DT, and Td) and residual seizure disorders, or as sufficient to favor rejection, there is no support for a claim that there is a causal relationship, or that one is at all likely. The Department has therefore determined that residual seizure disorder cannot reasonably be determined in some circumstances to be caused or significantly aggravated by tetanus toxoid-containing vaccines.

II. Vaccines to Prevent Rubella

In the final rule recently issued after consideration of the section 312 IOM report, the Department added chronic arthritis as a Table injury for vaccines against rubella. (60 FR 7694–7695.) The Department also promulgated in the Qualifications and Aids to Interpretation criteria for determining when chronic arthritis would be given a presumption that the vaccine caused the condition.

Faced with petitions filed under the Program alleging that arthritis was caused in fact by the rubella vaccine, the Court of Federal Claims developed criteria for determining when to compensate such petitions. In an order dated January 11, 1993, a Special Master of the Court set forth criteria for such a determination. The Special Master did so after hearing expert testimony from witnesses representing the fields of rheumatology, virology and infectious disease.

The Department concludes that it is appropriate to reconcile the Special Master's criteria with the criteria in the final rule, to the extent possible. Accordingly, the Department has undertaken to evaluate the Special Master's criteria for possible use in revised Qualifications and Aids to Interpretation, as well as in the time period for onset of the symptoms of arthritis set forth in the Table of Injuries.

The Special Master's criteria are quoted below:

''1. The petitioner in fact had a rubella vaccination, at a time when the petitioner was 18 years or older.

''2. The petitioner had a history, over a period of at least three years prior to the vaccination, of freedom from any sort of persistent or recurring polyarticular joint symptoms.

''3. The petitioner has developed an antibody response to the rubella virus.

''4. The petitioner experienced the *onset* of polyarticular arthropathic symptoms during the period between one and six weeks after the vaccination.

''5. Polyarticular arthropathic symptoms continued for at least six months after the onset; or, if symptoms remitted after the acute stage, polyarticular arthropathic symptoms recurred within one year of such remission.

''6. There is an absence of another good explanation for the arthropathy; the petitioner has not received a confirmed diagnosis of rheumatoid arthritis, nor a diagnosis of any of a number of other specified conditions.''

The Department has decided to propose incorporating into the Table and Aids to Interpretation elements of criteria 2, 3, and 4. That portion of criterion 2 that refers to a 3-year period without symptoms prior to vaccination is accepted and is proposed to be added in introductory paragraph (b)(6)(i); the portion of criteria 2 and 4 referring to polyarticular joint symptoms is not accepted, as the Department believes that objective signs of arthropathy (joint disease) are necessary. The Department does not agree with criterion 1, the age qualifier, as it would establish an arbitrary age of onset which is not supported by the current medical literature. Criterion 4 specifies a time of onset after vaccination from between 1 and 6 weeks. The final rule pursuant to the section 312 report specified a time of onset from 0–42 days. On review of the relevant medical literature and expert testimony, the Department believes that the evidence would not support a finding of causation with onset before the seventh day after rubella vaccination. Accordingly, the Department proposes to change the period for the first symptom or manifestation of onset of chronic arthritis in the Table itself to be between 7–42 days as reflected in revised paragraph (b)(6)(i)(A).

For the most part, criteria 5 and 6 are already part of the rule adopted pursuant to the section 312 report. No further changes are proposed in this regard.

The Department does not agree, however, with the Court's inclusion of arthralgia (joint pain) as evidence of arthropathic symptoms. Based on medical expert testimony and other related scientific information, the Department continues to believe that arthralgia alone, in the absence of objective signs of arthritis, should not be viewed as evidence of rubella vaccine-related chronic arthritis. Furthermore, the Department is proposing to add paragraph (b)(6)(i)(C) that ''medical documentation of an antibody response to the rubella virus'' is required.

Although criterion 6 does not list fibromyalgia as an alternative diagnosis for purposes of determining eligibility for compensation, a recent Court decision (Johnson v. Secretary, HHS, No. 92–478V), concluded that fibromyalgia is a condition unrelated to rubella vaccination. Accordingly, the Department proposes to add fibromyalgia in paragraph (b)(6)(ii) to the list of conditions which will not be given a presumption of vaccine causation.

III. Vaccines to Prevent Measles

A. Thrombocytopenic Purpura

In children, most cases of immune (idiopathic) thrombocytopenia purpura (ITP) are self-limited disorders that follow a viral infection, most commonly a nonspecific respiratory infection. Viral antigen is thought to trigger synthesis of antibody that reacts with virus antigen, and then the antibody-antigen complex is bound to receptors on the platelet surface. Immune thrombocytopenic purpura often produces petechiae, purpura, and mucosal bleeding. The associated symptoms of petechiae, purpura and mucosal bleeding are generally only seen when the platelet counts are less than 50,000/mm^3 (thrombocytopenia is defined as a platelet count less than 150,000/mm^3). Red and white blood cells are normal in ITP. Acute thrombocytopenia in children rarely becomes chronic, that is, lasting more than 6 months. Chronic thrombocytopenic purpura is thought to be related to an underlying autoimmune disorder and not to be the result of a viral vaccination or viral infection.

The Institute of Medicine (IOM) concluded that the evidence establishes a causal relation between MMR and immune thrombocytopenia and a causal relation between MMR and death from complications associated with severe thrombocytopenia. The conclusions of the IOM were based on biologic plausibility, case series, uncontrolled observational studies (e.g., Nieminen U, Peltola H, Syrjala MT, Makipernaa A, Kekomaki R. Acute thrombocytopenic purpura following measles, mumps and rubella vaccination: a report on 23 patients. Acta Paediatrica 1993; 82:267–270) and the controlled observational study by Oski and Naiman (Oski FA, Naiman JL. Effect of live measles vaccine on the platelet count. New England Journal of Medicine 1996; 275:352–356). The study by Oski and Naiman reported on the occurrence of immune thrombocytopenia after the administration of the Edmonston B measles vaccine, a vaccine which is no longer used in the United States. In this controlled observational study, the maximum depression of the platelet count was noted at 1 week post-immunization (although a decrease in platelet count could be seen by 3 days post-immunization), and platelet counts return to preimmunization levels generally by 3 weeks post-immunization. In the study by Nieminen and colleagues, 23 of approximately 700,000 children immunized over an 8-year period were found to have thrombocytopenia after immunization with MMR vaccine. The platelet count reached its nadir at 21 days (median) post-immunization, with purpura appearing at 17 days (median) post-immunization. The IOM thought that it was biologically plausible that the MMR vaccine could cause immune thrombocytopenia. The NVAC Subcommittee concurred with the IOM conclusion, but because the ITP that was observed after vaccination with MMR was relatively benign with complete recovery in less than 6 months, recommended against the addition of this disease to the Vaccine Injury Table. While cases with full recovery is less than 6 months will not be eligible for compensation (see section 2111(c)(1)(D)(i) of the Act), the rare case with continuing complications should be eligible for a presumption of causation. Thus, the Department proposes that thrombocytopenic purpura be added to the Vaccine Injury Table.

The Department's proposal is based on the IOM conclusion of biologic plausibility of immune thrombocytopenia occurring after MMR vaccination, the possible risk to injury from that thrombocytopenia, and the necessity to clarify the clinical aspects of thrombocytopenia that should be compensable. Conditions that can cause thrombocytopenia or are associated with thrombocytopenia, but are not related to immune thrombocytopenia associated with MMR vaccination, are listed in the Qualifications and Aids to Interpretation as noncompensable conditions. This list of conditions is not exhaustive. A 7- to 30-day timeframe of onset is proposed as the period for a Table injury. This timeframe is largely based on the 1993 uncontrolled study by Nieminen and colleagues.

The ACCV voted to concur with the proposal to add thrombocytopenic purpura to the Table but requested some clarification and changes to the proposed Qualifications and Aids to Interpretation. The reference to a bone marrow examination now includes the phrase ''if performed'' in response to concerns from ACCV members that this test may not have been used in rare cases. Some ACCV members were concerned about the reference to ''viral infections'' and suggested that examples of viruses that cause immune thrombocytopenia be listed. The Department has accepted this suggestion but notes that while some examples are listed, it would not be practical to list all viral etiologies of immune thrombocytopenia. Thrombocytopenic purpura is proposed to be added under paragraph (b)(8).

B. Residual Seizure Disorder

The IOM placed Residual Seizure Disorder (RSD) in Category #2 (''insufficient evidence'') for monovalent measles, and multivalent measles and mumps vaccines, and Category #1 (''no evidence'') for mumps vaccine alone. Information from case reports, case series, and uncontrolled observational studies, seems to indicate that most seizures following measles immunization are ''febrile seizures'' and, therefore, are not expected to lead to recurrent seizures or epilepsy. There were no controlled studies identified by the IOM. Unlike encephalopathy following measles immunization, there is no apparent biologic plausibility for RSD. Furthermore, there is no apparent biologic plausibility for RSD. Furthermore, there is little evidence that seizures, in the absence of acute encephalopathy, can lead to chronic encephalopathy or any clinical manifestation such as RSD.

Both the 1991 and 1994 NVAC Ad Hoc Subcommittees commented on this issue. The former endorsed the removal of RSD, noting the lack of research or clinical data supporting this as a Table condition. Since its removal went significantly beyond the scope of the changes proposed by the PHS Task Force on the Vaccine Injury Compensation Program based on the section 312 IOM Report, the Secretary decided to defer removal awaiting publication of the section 313 IOM Report. Three years later, similar viewpoints were expressed by the NVAC Subcommittee. The Subcommittee unanimously recommended removal of any condition now present on the Table that was placed in Category #2 by the section 313 IOM. Residual Seizure Disorder fits this criterion, and therefore, the legal presumption of causation is proposed to be removed from the Table.

The ACCV voted 5 to 4 to retain RSD as a Table injury for MMR (and components thereof) vaccines. Some members felt that the IOM did not cite evidence strong enough to delete from the Table an injury that Congress had placed thereon. Some felt that there would be potential disruption of the Program if new data emerge showing that there is a causal relation for this condition. One member raised a concern about the number of cases now pending under the Program citing this Table injury. Furthermore, a member expressed concern that the U.S. Court of Federal Claims would make it more difficult for a petitioner to prove causation in fact for this condition if it is removed from the Table. Another

member felt it would be unwise to remove the condition prior to publication of the final Qualifications and Aids to Interpretation for ''encephalopathy'' under the section 312 rule.

The Department has given careful consideration to the issues raised by the ACCV. As indicated above, the evidence is insufficient for the Secretary to conclude that the condition can reasonably be determined in some cases to be caused or aggravated by the MMR vaccine. This is true regardless of the inclusion of the condition on the initial statutory Table of Injuries and regardless of the number of cases filed under the initial Table.

As to the possibility of having to include this condition again on the Table should new scientific data support such an action, the Department would of course be willing to consider such action should there be reliable data for doing so. Under section 2116(b) of the Act, should the condition be reintroduced to the Table, petitioners would have 2 years to file a petition based on injuries occurring at any time during the 8-year period prior to such reintroduction.

As to the increased difficulty of proving causation in fact, it is of course the case that this burden was not imposed on petitioners while there was a Table injury of this sort. The Court of Federal Claims will be faced with determining causation in fact under the statutory preponderance of the evidence standard. The IOM's conclusions and the data underlying it will be, in the Department's opinion, relevant to that inquiry.

Finally, with regard to the definition of ''encephalopathy'' in the section 312 rule, the Department notes that seizures alone are not defined as constituting an encephalopathy, but that certain serious seizure events with demonstrated sequelae can do so. (See 42 CFR § 100.3(b)(2), as added at 60 FR 7694).

For the foregoing reasons, the Department is proposing the removal of the condition RSD for MMR (or components thereof) vaccines from the Table.

C. Vaccine Strain Measles Viral Infection in an Immunodeficient Recipient

The Institute of Medicine study concluded that the evidence establishes a causal relation between vaccine-strain measles virus infection in immunocompromised individuals and death. This conclusion is based on a few case reports of death following the administration of live attenuated measles virus vaccine in children with severe combined immunodeficiency syndrome, leukemia, or dysgammaglobulinemia (Monafo WJ, Haslam DB, Roberts RL, Zaki SR, Bellini WJ, and Coffin CM. Disseminated measles infection after vaccination in a child with a congenital immunodeficiency. J of Pediatrics 1994; 124(2):273–276) (Hong R, Gilbert EF, Opitz JM. Omenn disease: termination in lymphoma. Pediatric Pathology 1985; 3:143–154) (Mihartsch MJ, Ohnacker H, Just M, Nars PW. Lethal measles giant cell pneumonia after live measles vaccination in a case of thymic alymphophasia Gitlin. Helvetica Paediatrica Acta 1972; 27(2):143–146) (Mawhinney H, Allen IV, Beare JM, Bridges JM, Connolly HH, Haire, et al. Dysgammaglobulinaemia complicated by disseminated measles. British Medical Journal 1971; 2:380–381) (Mitus A, Holloway A, Evans AE, Enders JF. Attenuated measles vaccine in children with acute leukemia. American Journal of Disease of Children 1962; 103:243–248). Measles and, to a much lesser extent, measles vaccine infection in severely immunocompromised individuals may result in an overwhelming infection and death. The NVAC Subcommittee concurred with the IOM conclusion, but recommended that compensation for this condition be provided under the causation in fact standard of the statute, rather than through the presumption given by the Vaccine Injury Table.

The Department has decided to propose adding disseminated vaccine-strain measles virus infection in immunocompromised recipients to the Table. This decision is based on the recently published report by Monafo et al. of a 15-month-old immunodeficient male who received measles vaccine and died 3 months later of a molecularly-confirmed vaccine-strain measles virus infection (Monafo WJ, Haslam DB, Roberts RL, Zaki SR, Bellini WJ, and Coffin CM. Disseminated measles infection after vaccination in a child with a congenital immunodeficiency. Journal of Pediatrics 1994; 124(2):273–276). The time for onset is proposed to be 6 months, as is the case in the statutory Table for immunocompromised individuals and polio vaccines. Death as a sequela to this condition would also be covered by the Table. The Qualifications and Aids to Interpretation, under proposed paragraph (b)(9), provides that the measles virus should be determined to be the vaccine-strain by vaccine-specific monoclonal antibody or polymerase chain reaction sequencing, in order to eliminate cases of injury based on endemic measles.

IV. Oral Polio Vaccine

A. Guillain-Barre Syndrome (GBS)

The Institute of Medicine study concluded that the evidence favored the acceptance of a causal relation between oral poliovirus vaccine (OPV) and Guillain-Barre syndrome (GBS). The conclusion was based on an increased incidence of GBS in a 6-year surveillance study for GBS in a southern province of Finland (Uusimaa) reported by Kinnunen et al. in 1989 (Kinnunen E, Farkkila M, Hovi T, Juntunen J, Weckstrom P. Incidence of Guillain-Barre syndrome during a nationwide oral poliovirus vaccine campaign. Neurology 1989; 39:1034–1036). Ten cases of poliomyelitis due to wild poliovirus occurred between August 1984 and January 1985 at a time when inactivated polio vaccine (IPV) was generally used, and a mass immunization program with OPV immunized 94 percent of the Finnish population between 2/10/85 and 3/15/85. Ten cases of GBS occurred in OPV recipients within 10 weeks after immunization, and the relative risk calculated by the IOM committee among adult OPV recipients in a population previously immunized with IPV was statistically significant when calculated on calendar quarters. However, the discussion of the report by Kinnunen et al. states that ''if we add the 4 cases in the 4th quarter of 1985 (sic—data actually refer to 1984), there are 7 cases before OPV and 7 cases after OPV in this 6-month period.'' Thus, OPV in this population could not be the only explanation for the GBS cases, since the analysis by calendar quarters was inconsistent with the analysis of GBS cases based on the periods before and after the administration of OPV or if the quarters were constructed in another way.

Since the publication of the IOM report in 1993, Rantala et al. failed to show a temporal association between GBS and OPV after studying 93 cases of GBS identified in children less than 15 years of age from 22 hospitals over 6 years (Rantala H, Cherry JD, Shields WD, Uhari M. Journal of Pediatrics 1994; 124(2):220–3). On the basis of the available information, the presumption that OPV causes GBS within any time period should not be granted. Based on the most recent data, which had not been available to the IOM committee, the NVAC Subcommittee unanimously concurred with this proposal. The ACCV voted to concur with the proposal not to add GBS to the Table. Those not

voting in favor voiced reservations over their unfamiliarity with the Rantala study, and the fact that its conclusions differed from the IOM's findings.

The Department has evaluated the comments of the NVAC Subcommittee and of the ACCV and has decided not to propose the addition to GBS to the Table. While it is true that the IOM felt the evidence was sufficient to determine that GBS was casually related to OPV, new data published since the IOM study and the NVAC Subcommittee conclusions have persuaded the Department that a presumption of causation should not be provided. Petitioners, however, may use the IOM report to pursue a causation in fact theory before the U.S. Court of Federal Claims.

B. Vaccine-Strain Poliovirus Infection and Death

The Institute of Medicine study concluded that the evidence establishes a causal relation between oral poliovirus vaccine (OPV) and vaccine-strain infection and death, including infection that results in paralytic poliomyelitis. This conclusion is based on case reports of deaths with poliovirus infections among non-immunodeficient and immunodeficient vaccine recipients. (IOM Report, pages 296–299) Since September 1994, the eradication of indigenous wild type poliovirus in the United States has been certified.

Death and vaccine-associated paralytic poliomyelitis within 30 days in non-immunodeficient individuals, and within 6 months in immunodeficient individuals, are already covered in the Vaccine Injury Table, and poliovirus myocarditis and death in a 3-month-old non-immunodeficient male has been compensated by a preponderance of the medical evidence. Based on case reports, the Department has concluded that vaccine-strain poliovirus infection determined by the isolation of poliovirus from the affected tissue that occurs within 30 days after administration or contact in non-immunodeficient individuals, and within 6 months after administration or contact in immunodeficient individuals, should be added to the Table.

A subcommittee of the National Vaccine Advisory Committee concurred with the IOM conclusions and accepted the original Department proposal not to add it to the Table. Since the NVAC meeting, the Department has decided to provide a legal presumption of causation for vaccine-strain polioviral infection within 30 days in non-immunodeficient individuals, and within 6 months in immunodeficient individuals. The ACCV voted unanimously in favor of this proposal.

The Qualifications and Aids to Interpretation, under proposed paragraph (b)(10), contains standards for determining whether a case is due to the vaccine strain of the virus. The identification of poliovirus is necessary to eliminate an enterovirus other than vaccine-strain poliovirus that can cause similar overwhelming infection and death. Isolation of poliovirus from the stool is not sufficient to establish a specific tissue infection or disease caused by vaccine-strain poliovirus, because viral shedding from the gastrointestinal tract occurs in the absence of other tissue infection or disease. The poliovirus should be determined to be vaccine-strain by oligonucleotide or polymerase chain reaction tests.

V. Hepatitis B Vaccine

A. Anaphylaxis or Anaphylactic Shock

In 1981, a plasma-derived hepatitis B vaccine was licensed for the first time in the United States. In 1986, the first recombinant hepatitis B vaccine produced by genetic engineering was licensed and is the form currently used in the United States. In 1991, the Advisory Committee on Immunization Practices recommended that hepatitis B vaccine be administered to all infants in the United States.

The Institute of Medicine concluded that the evidence establishes a causal relation between hepatitis B vaccine and anaphylaxis (313 Report, p. 230). The conclusion was based on biologic plausibility, the temporal sequence of observed events following vaccination, and the observation of a spectrum of clinical reactions from mild hypersensitivity to anaphylaxis in the host after exposure to hepatitis B vaccine.

The Department proposes to add hepatitis B vaccine to the Table. Anaphylaxis and anaphylactic shock with onset within 4 hours following the administration of the vaccine is proposed as a Table injury. Both the NVAC Subcommittee and ACCV voted unanimously in favor of this proposal.

VI. Hemophilus influenzae type b (Hib) Vaccine [polyribosylribitol phosphate (PRP) only]

A. Early Onset Invasive Hib Disease

The unconjugated Hemophilus influenzae type b polysaccharide or PRP vaccine was first licensed in April 1985. Since December 1987, when the first polysaccaharide-protein conjugate vaccine was licensed, the PRP has not been routinely administered. It is no longer available for general use.

Surveillance, serologic, and experimental data have demonstrated a transient decrease in protective antibody levels following immunization with the unconjugated PRP vaccine. Analysis of the data suggests that children over 18 months of age who received their first Hib immunization with the unconjugated PRP vaccine had an increased risk of Hemophilus disease in the 7-day interval following the immunization. The Institute of Medicine found that the evidence favored acceptance of a causal relation between unconjugated PRP vaccine and early onset (i.e. onset within 7 days) invasive Hib disease in children over 18 months of age who received their first Hib immunization with the unconjugated PRP vaccine (IOM report, p. 260). However, ''the evidence favors rejection of a causal relation between immunization with Hib conjugate vaccines and early-onset Hib disease'' (IOM report, p. 261). The NVAC Subcommittee concurred with these conclusions. Thus, the statutory presumption of causation should be extended to cases of invasive Hib disease that meet the standards proposed in the Qualifications and Aids to Interpretation. Early-onset Hib disease is proposed to be added under paragraph (b)(11).

VII. Hib Vaccine (Conjugate)

The Hib conjugate vaccines are proposed to be added to the Table with no condition specified. While the Hib conjugate vaccines appear to be capable of causing a transient decline in serum antibody levels following immunization, prospective observational studies have not demonstrated that immunization with the conjugate vaccines increases the risk of early-onset Hib disease. The Institute of Medicine found ''the evidence favors rejection of a causal relation between immunization with Hib conjugate vaccines and early-onset Hib disease'' (IOM report, p. 261). The NVAC Subcommittee concurred with this conclusion. One member of the ACCV expressed the view that the information upon which the IOM based its conclusion was unreliable. A motion to include early onset Hib disease as a Table injury for Hib conjugate vaccines did not pass. The ACCV voted to accept the Department's recommendation by an 8 to 1 vote.

VIII. New Vaccines Recommended for Routine Administration by CDC

The Department proposes to add to the Table any new vaccine that is

recommended by the Centers for Disease Control and Prevention (CDC) for routine administration to children, upon indication to the Secretary that the vaccine has been so recommended. Accordingly, once Congress enacts an excise tax to cover that vaccine, the vaccine will be covered under the VICP. Until specified injuries are added to the Table through the rulemaking process, individuals who receive newly recommended vaccines will not receive a presumption of causation, but will instead be required to prove causation in fact. Of course, consistent with the general process for amending the Table, once the Department determines that specific adverse events have been associated with newly recommended vaccines, the Department will propose further changes to the Vaccine Injury Table in order to confer the appropriate presumption of causation.

The Food and Drug Administration licensed hepatitis A virus vaccine on February 22, 1995, and licensed varicella virus vaccine on March 17, 1995. Vaccines licensed after August 10, 1993, and recommended by the CDC for ''routine administration'' to children are mandated by OBRA of 1993 to be included in the National Vaccine Injury Compensation Program. Recommendations on hepatitis A and varicella vaccine usage by CDC are pending. Furthermore, based on information from clinical trials, there are no specific injuries for either vaccine identified by the Secretary at this time that would warrant inclusion on the Vaccine Injury Table. Further guidance in these areas will be forthcoming during the NPRM's publication and public comment period.

Economic Impact

The Secretary certifies that this proposed rule will not have a significant impact on a substantial number of small businesses, because it will have only small effects, and those primarily on individuals. The effects will be primarily on the ability of certain individuals to obtain compensation without having a burden of proving causation in fact. Attorneys who represent such individuals will be affected only to the extent that they may have a harder or easier burden of proof with respect to the petitions filed. However, under section 2115(e) of the Act, in almost all cases, attorneys' reasonable fees and costs are reimbursed from the Vaccine Injury Compensation Trust Fund.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

As stated above, this proposed rule would modify the Vaccine Injury Table based on legal authority, and under that authority the Court will award such fees and costs as appropriate under the law. As such, the regulation would have little direct effect on the economy or on Federal or State expenditures.

Effect of the New Rule

The proposed rule will have an effect for individuals who were not eligible to file petitions based on the earlier versions of the Vaccine Injury Table, but who may be eligible to file petitions based on the revised Table. The Act permits such individuals to file a petition for such compensation not later than 2 years after the effective date of the revision if the injury or death occurred no more than 8 years before the effective date of the revision of the Table. *See* 42 U.S.C. 300aa–16(b). As part of the Omnibus Budget Reconciliation Act of 1993, Congress amended this section to permit individuals to file claims within this 2-year period, even if they had already filed a claim involving a particular vaccine, but only if the Table revision will ''significantly increase the likelihood of obtaining compensation.'' *See* Pub. L. 103–66, sec. 13632(a)(1), August 10, 1993. For example, this amendment would permit an individual whose claim alleging MMR vaccine-related thrombocytopenic purpura had been dismissed by the Claims Court to file a new claim for the same vaccine-related injury, if the individual can show that the addition of thrombocytopenic purpura to the Table as a MMR vaccine-related condition has significantly increased the likelihood of obtaining compensation. This rule will also affect potential claims for individuals whose conditions are proposed to be removed from the Table. Although these individuals will be able to pursue their claims under the ''causation in fact'' standard, they will not be entitled to a presumption of causation that is granted by having a condition on the Vaccine Injury Table.

Possible Effect on Other Legislation

This rule will not have an effect on the Vaccines for Children program, implemented by the Centers for Disease Control and Prevention under section 1928 of the Social Security Act, as enacted by section 13631 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993). This section provides for the establishment of a program to distribute free vaccines to all vaccine-eligible children, as defined by this section. The proposed rule would modify the existing Vaccine Injury Table, a mechanism by which compensation is awarded to individuals who have been found to have suffered from vaccine-related injuries. Because the two authorities are not related, the publication of this rule should not have any impact on the Vaccines for Children Program.

Paperwork Reduction Act of 1980

This proposed rule has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Health insurance, Immunization.

Dated: June 2, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: August 22, 1995.

Donna E. Shalala,

Secretary.

Accordingly, 42 CFR Part 100 is proposed to be amended as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15); § 100.3, Vaccine Injury Table, issued under secs. 312 and 313 of Pub. L. 99–660, 100 Stat. 3779–3782 (42 U.S.C. 300aa–1 note) and sec. 2114 (c) and (e) of the PHS Act, 100 Stat. 3766 and 107 Stat. 645 (42 U.S.C. 300aa–14 (c) and (e)).

2. Section 100.3 is amended by revising the Vaccine Injury Table in paragraph (a); by setting out the introductory text in paragraph (b); by revising paragraph (b)(6); by adding paragraphs (b)(7), (b)(8), (b)(9), (b)(10), and (b)(11); and by revising paragraph (c) to read as follows:

§ 100.3 Vaccine injury table.

(a) * * *

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. Vaccines containing tetanus toxoid (e.g., DTaP, DTP, DT, Td, or TT):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Brachial Neuritis	2–28 days.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II. Vaccines containing whole cell pertussis bacteria, extracted or partial cell pertussis bacteria, or specific pertussis antigen(s) (e.g., DTP, DTaP, P, DTP-Hib):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
III. Measles, mumps, and rubella vaccine or any of its components (e.g., MMR, MR, M, R):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days).
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Vaccines containing rubella virus (e.g., MMR, MR, R):	
A. Chronic arthritis	7–42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
V. Vaccines containing measles virus (e.g., MMR, MR, M):	
A. Thrombocytopenic purpura	7–30 days.
B. Vaccine-Strain Measles Viral Infection in an immunodeficient recipient	6 months.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VI. Vaccines containing polio live virus (OPV):	
A. Paralytic Polio	
—in a non-immunodeficient recipient	30 days.
—in an immunodeficient recipient	6 months.
—in a vaccine associated community case	Not applicable.
B. Vaccine-Strain Polio Viral Infection	
—in a non-immunodeficient recipient	30 days.
—in an immunodeficient recipient	6 months.
—in a vaccine associated community case	Not applicable.
C. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VII. Vaccines containing polio inactivated virus (e.g., IPV):	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
VIII. Hepatitis B. vaccines:	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IX. Hemophilus influenzae type b polysaccharide vaccines (unconjugated, PRP vaccines):	
A. Early-onset Hib disease	7 days.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
X. Hemophilus influenzae type b polysaccharide conjugate vaccines:	
No Condition Specified	
XI. Any new vaccine recommended by the Centers for Disease Control and Prevention for routine administration to children, after publication by the Secretary of a notice of coverage:	
No Condition Specified	

(b) *Qualifications and aids to interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table to paragraph (a) of this section:

* * * * *

(6) *Chronic Arthritis.* (i) For purposes of paragraph (a) of this section, chronic arthritis may be found in a person with no history in the 3 years prior to vaccination of arthropathy (joint disease) on the basis of:

(A) Medical documentation, recorded within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred between 7 and 42 days after a rubella vaccination;

(B) Medical documentation (recorded within 3 years after the onset of acute arthritis) of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following vaccination; and

(C) Medical documentation of an antibody response to the rubella virus.

(ii) For purposes of paragraph (a) of this section, the following shall not be considered as chronic arthritis: Musculoskeletal disorders such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile

rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polymyositis/dermatomyositis, fibromyalgia, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine diseases, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reither's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as chronic arthritis for purposes of paragraph (a) of this section.

(7) *Brachial neuritis.* (i) This term is defined as dysfunction limited to the upper extremity nerve plexus (i.e., its trunks, divisions, or cords) without involvement of other peripheral (e.g., nerve roots or a single peripheral nerve) or central (e.g., spinal cord) nervous system structures. A deep, steady, often severe aching pain in the shoulder and upper arm usually heralds onset of the condition. The pain is followed in days or weeks by weakness and atrophy in upper extremity muscle groups. Sensory loss may accompany the motor deficits, but is generally a less notable clinical feature. The neuritis, or plexopathy, may be present on the same side as or the opposite side of the injection; it is sometimes bilateral, affecting both upper extremities.

(ii) Weakness is required before the diagnosis can be made. Motor, sensory, and reflex findings on physical examination and the results of nerve conduction and electromyographic studies must be consistent in confirming that dysfunction is attributable to the brachial plexus. The condition should thereby be distinguishable from conditions that may give rise to dysfunction of nerve roots (i.e., radiculopathies) and peripheral nerves (i.e., including multiple mononeuropathies), as well as other peripheral and central nervous system structures (e.g., cranial neuropathies and myelopathies).

(8) *Thrombocytopenic purpura.* This term is defined by a serum platelet count less than 50,000/mm^3. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with other causes such as hypersplenism, autoimmune disorders (including alloantibodies from previous transfusions) myelodysplasias, lymphoproliferative disorders, congenital thrombocytopenia or hemolytic uremic syndrome. This does not include cases of immune (formerly called idiopathic) thrombocytopenic purpura (ITP) that are mediated, for example, by viral or fungal infections, toxins or drugs. Thrombocytopenic purpura does not include cases of thrombocytopenia associated with disseminated intravascular coagulation, as observed with bacterial and viral infections. Viral infections include, for example, those infections secondary to Epstein Barr virus, cytomegalovirus, hepatitis A and B, rhinovirus, human immunodeficiency virus (HIV), adenovirus, and dengue virus. An antecedent viral infection may be demonstrated by clinical signs and symptoms and need not be confirmed by culture or serologic testing. Bone marrow examination, if performed, must reveal a normal or an increased number of megakaryocytes in an otherwise normal marrow.

(9) *Vaccine-strain measles viral infection.* This term is defined as a disease caused by the vaccine-strain that should be determined by vaccine-specific monoclonal antibody or polymerase chain reaction tests.

(10) *Vaccine-strain polio viral infection.* This term is defined as a disease caused by poliovirus that is isolated from the affected tissue and should be determined to be the vaccine-strain by oligonucleotide or polymerase chain reaction. Isolation of poliovirus from the stool is not sufficient to establish a tissue specific infection or disease caused by vaccine-strain poliovirus.

(11) *Early-onset Hib disease.* This term is defined as invasive bacterial illness associated with the presence of Hib organism on culture of normally sterile body fluids or tissue, or clinical findings consistent with the diagnosis of epiglottitis. Hib pneumonia qualifies as invasive Hib disease when radiographic findings consistent with the diagnosis of pneumonitis are accompanied by a blood culture positive for the Hib organism. Otitis media, in the absence of the above findings, does not qualify as invasive bacterial disease. A child is considered to have suffered this injury only if the vaccine was the first Hib immunization received by the child.

(c) *Effective data provisions.* The revised Table of Injuries set forth in paragraph (a) of this section and the Qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions for compensation under the Program filed with the United States Court of Federal Claims on or after [the effective date of the Federal Register document which adopts these revisions as a final rule]. Petitions for compensation filed before [such effective date] shall be governed by section 2114 (a) and (b) of the Public Health Service Act as in effect on January 1, 1995, or by § 100.3 as in effect on March 10, 1995 (see 60 FR 7678, *et seq.*, February 8, 1995) as applicable.

[FR Doc. 95–27562 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7161]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria

required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arkansas	Perryville (city) Perry County.	Fourche La Fave River	Approximately 3,100 feet downstream of State Highway 10, at the City of Perryville corporate limits.	None	*279
			Just downstream of State Highway 10	None	*281
			Approximately 4,500 feet upstream of State Highway 10, at the City of Perryville corporate limits.	None	*283
			Appoximately 2.8 miles upstream of State Highway 10, at the City of Perryville corporate limits.	None	*286
			Approximately 3.2 miles upstream of State Highway 10.	None	*287
		Cedar Creek	At confluence with Fourche La Fave River.	None	*282
			Just upstream of Cedar Street	None	*286
			Just upstream of Alpin Street State Highway 60).	None	*324
			Approximately 3,600 feet upstream of Alpin Street (State Highway 60), at the City of Perryville corporate limits.	None	*345
Maps are available for inspection at the City of Perryville Water Department, Corner of B and Pine Streets, Perryville, Arkansas.					
Send comments to The Honorable Charles Roland, Jr., Mayor, City of Perryville, P.O. Box 116, Perryville, Arkansas 72126.					
Arkansas	Pulaski County (unincorporated areas).	Little Maumelle River	At confluence of Nowlin Creek	*268	*269
			Approximately 120 feet upstream of State Highway 10.	*293	*295
			Just downstream of Ferndale Cutoff Road.	*360	*358
			Just upstream of Grimmett Lane	*478	*476
			Just upstream Brush Mountain Trail	*566	*564
		Kinley Creek	Approximately 1,000 feet upstream of confluence with Nowlin Creek.	*292	*295
			Approximately 150 feet upstream of State Highway 10.	*309	*310
			Just upstream of Garrison Road	*394	*396
			Just upstream of Copper Creek Lane	*429	*428
		Nowlin Creek	Approximately 1,700 feet above mouth ...	*268	*270

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 150 feet downstream of Barrett Road.	*282	*281
			Just downstream of Goodson Road	*330	*330
			Approximately 100 feet upstream of County Road.	None	*400
			At upstream Limits of Detailed Study located at a County Road.	None	*500
		McHenry Creek	Approximately 1,150 feet upstream of Lawson Road.	*363	*359
			Approximately 200 feet upstream of Lawson Road.	None	*406
			Approximately 150 feet upstream of Green Bear Road.	None	*489
			Just upstream of Colonel Glenn Road	None	*546
Maps are available for inspection at the Planning Department, Pulaski County, 501 West Markham Street, Suite A, Little Rock, Arkansas.					
Send comments to The Honorable Floyd G. Villines, Pulaski County Judge, County Courthouse, 201 South Broadway, Little Rock, Arkansas 72201.					
California	Cloverday (city) Sonoma County.	Cloverdale Creek	At confluence with the Russian River	*302	*302
			Just upstream of the Southern Pacific Railroad bridge.	None	*315
			Just upstream of Third Street	None	*338
			Appoximately 200 feet upstream of Cloverdale Boulevard.	None	*374
			Approximately 100 feet upstream of Portofino Way.	None	*385
Maps are available for inspection at the City of Cloverdale, Department of Public Works, 124 North Cloverdale Boulevard, Cloverdale, California.					
Send comments to The Honorable Carol Chase, Mayor, City of Cloverdale, P.O. Box 217, Cloverdale, California 95425.					
California	Coalinga (city) Fresno County.	Warthan Creek	At confluence with Los Gatos Creek	None	*643
			Approximately 200 feet downstream of Jayne Avenue (both levees intact).	None	*658
			Approximately 200 feet downstream of Jayne Avenue (right levee failed).	None	*657
			Approximately 200 feet downstream of Jayne Avenue (left levee failed).	None	*656
			Approximately 5,000 feet upstream of Jayne Avenue.	None	*675
		Los Gatos Creek	Approximately 3,150 feet downstream of confluence with Warthan Creek (levee intact).	None	*633
			Approximately 3,150 feet downstream of confluence with Warthan Creek (right levee failed).	None	*638
			Just downstream of Southern Pacific Railroad (abandoned railroad).	None	*652
			Approximately 1,600 feet upstream of confluence with Coalmine Canyon Creek.	None	*683
Maps are available for inspection at the Planning Department, 155 West Durin Street, Coalinga, California.					
Send comments to The Honorable Jim Allen, Mayor, City of Coalinga, 155 West Durin Street, Coalinga, California 93210.					
California	Fresno County (unincorporated areas).	Warthan Creek	Approximately 1,200 feet upstream of confluence with Los Gatos Creek.	*646	*648
			Approximately 5,000 feet upstream of Jayne Avenue.	*678	*675
			Approximately 5,900 feet upstream of Alcalde Road.	*739	*739
		Los Gatos Creek	Approximately 9,000 feet downstream of Southern Pacific Railroad.	None	*618
			Approximately 3,200 feet downstream of Southern Pacific Railroad.	*641	*641
			Approximately 3,000 feet upstream of State Highway 198.	*691	*683

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Gayle Avenue	*760	*760
Maps are available for inspection at the Fresno County Library, Fresno, California.					
Send comments to The Honorable William H. Randolph, County Administrative Officer, 2281 Tulare Street, Fresno, California 93721.					
California	Solano County (unincorporated areas).	Alamo Creek	At Leisure Town Road	*84	*86
			Approximately 550 feet upstream of Vanden Road.	*96	*96
			Approximately 4,700 feet upstream of Pleasant Valley Road.	*232	*232
			At Pleasant Valley Road	*256	*256
		Ulatis Creek	Approximately 12,400 feet upstream of Leisure Town Road.	*129	*125
			Approximately 14,650 feet upstream of Leisure Town Road.	*145	*139
			Just downstream of Fruitvale Road	*192	*193
			Approximately 4,600 feet upstream of Fruitvale Road.	*226	*224
		Bucktown Creek	At confluence with Ulatis Creek	*224	*222
			Approximately 1,000 feet upstream of confluence with Ulatis Creek.	*224	*224
		Encinosa Creek	Approximately 450 feet downstream of Pleasant Valley Road.	*238	*231
			At Pleasant Valley Road (upstream crossing).	*248	*241
		Laguna Creek	Approximately 100 feet upstream of Highway 80.	*198	*202
			Approximately 450 feet downstream of Cherry Glen Road.	*214	*213
Maps are available for inspection at Solano Department of Environmental Management, 601 Texas Street, Fairfield, California.					
Send comments to The Honorable William Carroll, Chairman, Solano County Board of Supervisors, 580 Texas Street, Fairfield, California 94533.					
Iowa	Elkader (city) Clayton County.	Turkey River	Approximately 1.0 mile downstream of Iowa 13.	*720	*718
			Just upstream of Iowa 13	*726	*722
			Just upstream of the dam	*735	*735
			At Corporate Limit	*739	*738
Maps are available for inspection at 207 North Main Street, Elkader, Iowa.					
Send comments to The Honorable Tom Diers, Mayor, City of Elkader, 207 North Main Street, Elkader, Iowa 52043–0427.					
New Mexico	Sandoval County and incorporated areas.	Arkansas Channel	At confluence with West Branch of Black's Arroyo.	None	*5,499
			Approximately 30 feet upstream of Lisbon Avenue.	None	*5,508
			20 feet upstream of Comanche Road	None	*5,529
			Approximately 500 feet upstream of Comanche Road (Limit of Detailed Study).	None	*5,546
		Arroyo D	At confluence with Tributary B	None	*5,286
			Approximately 20 feet upstream of 23rd Street.	None	*5,289
			Approximately 500 feet upstream of 23rd Street (Limit of Detailed Study).	None	*5,299
		Arroyo de los Lomitas Negras.	At the inlet to the Dulcelina Curtis Channel.	None	*5,098
			Approximately 1,000 feet upstream of the inlet to the Dulcelina Curtis Channel.	None	*5,100
			Approximately 100 feet downstream of State Highway 528 (Limit of Detailed Study).	None	*5,121
		Arroyo de los Montoyas	At the inlet to the Harvey Jones Channel	*5,075	*5,079
			Approximately 2,500 feet upstream of the inlet to the Harvey Jones Channel.	*5,098	*5,100
			At the Village of Corrales/City of Rio rancho Corporate Limits.	*5,135	*5,135

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately feet upstream of the inlet to the Harvey Jones Channel (Limit of Detailed Study).	None	*5,140
		East Branch of Black's Arroyo.	Approximately 120 feet upstream of the Sandoval/Bernalillo County Line.	None	*5,178
			Approximately 100 feet upstream of 19th Street.	None	*5,240
			Approximately 120 feet upstream of 18th Street.	None	*5,255
			Approximately 40 feet upstream of Southern Boulevard.	None	*5,355
			Approximately 40 feet upstream of Western Hills Drive.	None	*5,432
			Approximately 600 feet upstream of Lema road (Limit of Detailed Study).	None	*5,459
		West Branch of Black's Arroyo.	At the Sandoval/Bernalillo County Line	None	*5,200
			Approximately 100 feet upstream of 19th Avenue.	None	*5,266
			Approximately 70 feet upstream of Southern Boulevard.	None	*5,433
			Approximately 20 feet upstream of Tarpon Avenue.	None	*5,531
			Approximately 4,200 feet upstream of Tarpon Avenue (Limit of Detailed Study).	None	*5,561
		Jemez River	Approximately 250 feet downstream of the Jemez Indian Reservation Boundary.	None	*5,602
			At confluence with the Rio Guadalupe	None	*5,656
			At the Village of Jemez Springs downstream corporate limits.	None	*5,984
			Approximately 10,560 feet upstream of the Jemez Springs downstream corporate limits.	None	*6,145
			Approximately 100 feet upstream of the Jemez Springs upstream corporate limits.	None	*6,305
			Approximately 1,200 feet upstream of confluence with San Antonio Creek (Limit of Detailed Study).	None	*6,801
		Nicklaus Channel	At confluence with the East Branch of Black's Arroyo.	None	*5,367
			Approximately 60 feet upstream of Fairway Loop.	None	*5,393
			Approximately 900 feet upstream of Lema Road (Limit of Detailed Study).	None	*5,418
		Player Channel	At confluence with the East Branch of Black's Arroyo.	None	*5,355
			Approximately 20 feet upstream of Trevino Drive.	None	*5,375
			Approximately 500 feet upstream of Trevino Drive (Limit of Detailed Study).	None	*5,380
		San Antonio Creek	At confluence with the Jemez River	None	*6,765
			Approximately 10,000 feet upstream of confluence with the Jemez River.	None	*7,156
			At confluence of Sulphur Creek	None	*7,616
			Approximately 8,300 feet upstream of confluence of Sulphur Creek (Limit of Detailed Study)..	None	*7,719
		Spur Channel	At confluence with the West Branch of Black's Arroyo.	None	*5,375
			Approximately 40 feet upstream of Southern Boulevard.	None	*5,462
			Approximately 1,100 feet upstream of Spur Road (Limit of Detailed Flooding).	None	*5,508
		Sugar Channel	At confluence with the West Branch of Black's Arroyo.	None	*5,520
			Approximately 20 feet upstream of Montego Drive.	None	*5,551

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 400 feet upstream of Montego Drive (Limit of Detailed Study).	None	*5,561
		Tributary A	At confluence with the West Branch of Black's Arroyo.	None	*5,275
			Approximately 100 feet upstream of 15th Street.	None	*5,362
			Approximately 1,000 feet upstream of Villa Road (Limit of Detailed Study).	None	*5,520
		Tributary B	At confluence with the East Branch of Black's Arroyo.	None	*5,200
			Approximately 120 feet upstream of 18th Avenue.	None	*5,259
			Approximately 200 feet upstream of 14th Avenue.	None	*5,312
			Approximately 800 feet upstream of 22nd Street (Limit of Detailed Study).	None	*5,355
		Zone AH	Shallow flooding east of the Dulcelina Curtis Channel.	*5,038	*5,033

Maps are available for inspection at 711 Camino Del Pueblo, Bernalillo, New Mexico. Send comments to The Honorable Debbie Hayes, Sandoval County Manager, P.O. Box 40, Bernalillo, New Mexico 87004.

Maps are available for inspection at Highway 4, Village Hall, Jemez Springs, New Mexico. Send comments to the Honorable David Sanchez, Mayor, Village of Jennez Springs, P.O. Box 87, Jemez Springs, New Mexico 87025.

Maps are available for inspection at 4324 Corrales Road, Corrales, New Mexico. Send comments to The Honorable Gary Kanin, Mayor, Village of Corrales, P.O. Box 707, Corrales, New Mexico 87048.

Maps are available for inspection at 3900 Southern Boulevard, Rio Rancho, New Mexico. Send comments to The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, P.O. Box 15550, Rio Rancho, New Mexico 87125–0550.

New Mexico	Sierra County (unincorporated areas), Williamsburg (Village), Truth or Consequences (city).	Rio Grande	Approximately 1,500 feet downstream of the Village of Williamsburg corporate limits (Limit of Detailed Study).	None	*4,231
			Village of Williamsburg downstream corporate limits.	None	*4,231
			Village of Williamsburg upstream corporate limits.	None	*4,233
			City of Truth or Consequences downstream corporate limits.	None	*4,233
			Approximately 20,600 feet upstream of the Limit of Detailed Study (Magnolia Street).	None	*4,244
			City of Truth or Consequences upstream corporate limits.	None	*4,257
			Approximately 6,500 feet upstream of Highway 51 (Limit of Detailed Study).	None	*4,257

Sierra County maps are available for inspection at 300 Date Street, Truth or Consequences, New Mexico. Send comments to Mr. Tony Chance, County Manager, Sierra County, 300 Date Street, Truth or Consequences, New Mexico 87901.

City of Truth or Consequences maps are available for inspection at 505 Sims Street, Truth or Consequences, New Mexico. Send comments to The Honorable Trey Campbell, Mayor, City of Truth or Consequences, 505 Sims Street, Truth or Consequences, New Mexico 87901.

Village of Williamsburg maps are available for inspection at Village Hall, Williamsburg, New Mexico. Send comments to The Honorable Victor Bertramson, Mayor, Village of Williamsburg, P.O. Box 150, Williamsburg, New Mexico 87942.

Oklahoma	Chandler (city) Lincoln County.	Bellcow Creek	Approximately 1,350 feet downstream of U.S. Highway 66.	*834	*831
			Just upstream of U.S. Highway 66	*838	*834
			Approximately 100 feet upstream of First Street.	*848	*845
			At Lake Road	*860	*855
		Bellcalf Creek	Approximately 700 feet downsteam of Lake Road.	*857	*855
			Approximately 100 feet upstream of Lake Road.	*859	*857
			Approximately 3,750 feet upstream of Lake Road.	*867	*867
		Chigger Creek	Approximately 70 feet upstream of Park Road.	*840	*838
			Just upstream of First Street	*853	*852

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 90 feet upstream of Chigger Road.	*868	*868
		Indian Creek	Approximately 100 feet upstream of Iowa Avenue.	*852	*853
			Just upstream of Eighth Street	*892	*892
			Approximately 900 feet upstream of Eighth Street.	*898	*898

Maps are available for inspection at 220 South Cleveland, Chandler, Oklahoma.

Send comments to The Honorable Keith Schroeder, Mayor, City of Chandler, City Hall, 1001 Steele Avenue, Chandler, Oklahoma 74834.

Oklahoma	Lincoln County (unincorporated areas).	Bellcow Creek	Approximately 4,500 feet downstream of confluence of Indian Creek.	*824	*823
			Just downstream of U.S. Highway 66	*835	*833
			Just downstream of Interstate Highway 44.	*853	*850
			Approximately 2,100 feet upstream of Lake Road.	*864	*856
		Bellcalf Creek	Approximately 700 feet downstream of Lake Road.	*857	*855
			Just downstream of Lake Road	*859	*856
			Approximately 3,450 feet upstream of Lake Road.	*866	*866
		Indian Creek	Just upstream of State Highway 18	*830	*829
			Just downstream of Iowa Avenue	*849	*850

Maps are available for inspection at the Lincoln County Courthouse, Chandler, Oklahoma.

Send comments to The Honorable Riley Miller, Jr., Chairman, Lincoln County Board of Commissioners, 810 Manvel, Chandler, Oklahoma 74834.

Oregon	Washington County (unincorporated areas).	Johnson Creek	At confluence with Cedar Mill Creek	*186	*186
			Just upstream of Southwest Walker Road	None	*188
			Approximately 50 feet upstream of Southwest Butner Road.	None	*192
			Just upstream of Southwest Barnes Road	None	*218
			Approximately 500 feet upstream of Cedar Hills Boulevard.	None	*260

Maps are available for inspection at 155 North First Avenue, Suite 300, Hillsboro, Oregon.

Send comments to The Honorable Linda Peters, Chairperson, Washington County Board of Commissioners, 155 North First Avenue, Suite 300, Hillsboro, Oregon 97124.

Utah	Wendover (town) Tooele County.	Drainage Along North Side of Interstate Highway 80..	Approximately 2,700 feet north of Interstate Highway 80 adjacent to corporate limits..	None	#2
			Approximately 2,000 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#1
			Approximately 1,000 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#2
			Approximately 500 feet north of Interstate Highway 80 adjacent to corporate limits.	None	#1
			Approximately 100 feet north of Interstate Highway 80 and 300 feet due east of corporate limits.	None	*4,349
			Approximately 100 feet north of Interstate Highway 80 1,300 feet due east of corporate limits.	None	*4,344
			Approximately 100 feet north of Interstate Highway 80 and 2,800 feet due east of corporate limits.	None	*4,339
		Drainage Along South Side of Interstate Highway 80.	Approximately 100 feet south of Interstate Highway 80 and 200 feet due east of corporate limits.	None	#3
			Approximately 700 feet south of Interstate Highway 80 and 450 feet east of corporate limits.	None	#2

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,500 feet south of Interstate Highway 80 and 1,000 feet due east of corporate limits.	None	#1
			Approximately 100 feet north of Union Pacific Railroad and 3,000 feet due east of corporate limits.	None	*4,245

Maps are available for inspection at 195 South First Street, Wendover, Utah.

Send comments to The Honorable Brenda Morgan, Mayor, Town of Wendover, P.O. Box 326, Wendover, Utah 84083–0326.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27657 Filed 11–07–95; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

[Docket No. FEMA–7159]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
GEORGIA	
(Name of community)	
Whitewater Creek:	
At a point approximately 350 feet downstream of State Route 85	*750
Approximately 500 feet downstream of confluence of Whitewater Creek	*873
South Camp Creek:	
At confluence with Whitewater Creek	*759

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.73 mile upstream of the confluence with Whitewater Creek	*759
Maps available for inspection at the Fayette County Engineering Department, 140 Stonewall Avenue West, Fayetteville, Georgia.	

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Indiana	Seymour (city) Jackson County.	Heddy Run, Von Fange Ditch.	Approximately 0.78 mile downstream of Chessie System at the extraterritorial limits.	*560	*561
			Approximately 70 feet upstream of Eighth Street.	None	*571
Maps available for inspection at the City Hall, 301 North Chestnut, Seymour, Indiana.					
Send comments to The Honorable John Burkhart, Mayor of the City of Seymour, City Hall, 301 North Chestnut, Seymour, Indiana 47274.					
Minnesota	Red Wing (City) Goodhue County.	Mississippi River	At downstream corporate limits	None	*682
			At upstream corporate limits	None	*687
		Spring Creek	At Chicago and Northwestern Railway	None	*693
			Approximately 0.8 mile upstream of Spring Creek Avenue.	None	*799
		Trout Brook	At confluence with Hay Creek	*700	*699
			Approximately 50 feet upstream of Pioneer Trail.	*719	*720
		Hay Creek	Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*688	*686
			Approximately 350 feet downstream of Pioneer Trail.	*704	*705
Maps available for inspection at the Building Department, 315 East Fourth Street, Red Wing, Minnesota.					
Send comments to The Honorable Romeo Cyr, Mayor of the City of Red Wing, Red Wing City Hall, P.O. Box 34, Red Wing, Minnesota 55066.					
Mississippi	DeSoto County (unincorporated Areas).	Horn Lake Creek	At upstream side of State Line Road	*235	*236
			At downstream side of Getwell Road	None	*364
		Cow Pen Creek	At confluence with Horn Lake Creek	*254	*255
			At downstream side of Illinois Central Railroad.	None	*308
		Rocky Creek	Approximately 500 feet upstream of Swinnea Road.	None	*314
			Approximately 0.4 mile upstream of Plum Point Road.	None	*366
		Pigeon Roost Creek	Approximately 1,580 feet downstream of Ingrams Mill Road.	None	*277
			Approximately 3.9 miles upstream of Ingrams Mill Road.	None	*295
		Lateral D	Approximately 0.5 mile upstream of Church Road.	None	*307
			At downstream side of Swinnea Road	None	*328
		Red Banks Creek	At confluence with Pigeon Roost Creek ..	None	*281
			Approximately 0.8 mile upstream of Red Banks Road.	None	*299
		Southaven Creek	At confluence with Horn Lake Creek	*254	*255
			Approximately 1,500 feet upstream of confluence with Horn Lake Creek.	*254	*255

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the DeSoto County Planning Department, DeSoto County Courthouse, 2535 Highway 51 South, Hernando, Mississippi.					
Send comments to Mr. Clouis B. Reed, Jr., DeSoto County Administrator, 2535 Highway 51 South, DeSoto County Courthouse, Hernando, Mississippi 38632.					
Mississippi	Horn Lake (city) DeSoto County.	Horn Lake Creek	Approximately 1.3 mile downstream of Illinois Central Railroad.	*253	*254
			Approximately 0.9 mile upstream of U.S. Route 51.	*273	*274
		Rocky Creek	At confluence with Horn Lake Creek	*268	*270
			Approximately 0.7 mile downstream of Interstate Route 55.	*273	*275
		Cow Pen Creek	Approximately 0.6 mile downstream of Goodman Road.	*287	*290
			At downstream side of Church Road	*287	*290
Maps available for inspection at the City of Horn Lake Planning Department, City Hall, 2285 Goodman Road, Horn Lake, Mississippi.					
Send comments to The Honorable Mike Thomas, Mayor of the City of Horn Lake, 2285 Goodman Road, Horn Lake, Mississippi 38637.					
Mississippi	Southaven (city) DeSoto County.	Horn Lake Creek	At upstream side of State Line Road	*235	*234
			Approximately 0.9 mile upstream of Elmore Road.	None	*306
		Lateral D	At confluence with Horn Lake Creek	None	*284
			Approximately 0.5 mile upstream of Church Road.	None	*307
		Lateral E	At confluence with Horn Lake Creek	*294	*292
			At downstream side of Tchulahoma Road	None	*339
		Southaven Creek	Approximately 1,800 feet upstream of confluence with Horn Lake Creek.	*254	*255
			Approximately 0.2 mile downstream of Illinois Central Railroad.	*254	*255
		Rocky Creek	At confluence with Horn Lake Creek	*268	*270
			Approximately 0.78 mile upstream of Swinnea Road.	None	*328
Maps available for inspection at the City of Southaven Planning Department, City Hall, 8625 Highway 51, Southaven, Mississippi.					
Send comments to The Honorable J. A. Cates, Mayor of the City of Southaven, P.O. Box 425, Southaven, Mississippi 38671.					
New York	Bolton (town) Warren County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Town of Bolton Zoning Office, Lakeshore Drive, Bolton, New York.					
Send comments to Mr. Frank Dagles, Bolton Town Supervisor, P.O. Box 698, Bolton, New York 12814.					
New York	Lake George (town) Warren County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Lake George Town Center, Old Post Road, Lake George, New York.					
Send comments to Mr. Louis Tessier, Lake George Town Supervisor, Town Center, Old Post Road, Lake George, New York 12845.					
New York	Putnam (town) Washington County.	Lake George	Entire shoreline within community	None	*321
Maps available for inspection at the Putnam Town Clerk's Office, Route 22, Putnam Station, New York.					
Send comments to Mr. John Lapointe, Supervisor of the Town of Putnam, Box 125, Lower Road, Putnam Station, New York 12861.					
New York	Queensbury (town) Warren County.	Glen Lake	Along entire shoreline	None	*404
		Lake George	Entire shoreline within community	None	*321
		Rush Pond	Entire shoreline	None	*404
		Unnamed Ponding Area	Area near I–87	None	*404
Maps available for inspection at the Office of the Town Clerk, 742 Bay Road, Queensbury, New York.					
Send comments to Mr. Fred Champagne, Queensbury Town Supervisor, 742 Bay Road, Queensbury, New York 12804.					
New York	Ticonderoga (town) Essex County.	Lake George	Entire shoreline within community of Deland Point Road.	None	*321

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Ticonderoga Town Hall, 324 Champlain Avenue, Ticonderoga, New York. Send comments to Mr. Michael J. Connery, Ticonderoga Town Supervisor, P.O. Box 471, Ticonderoga, New York 12883.					
North Carolina	Cary (town) Wake County.	Pine Lake	Entire shoreline of Pine Lake	*384	*383
		lSwift Creek Tributary No. 7 (Basin 20, Stream 24) (Currently shown as Pine Lake).	Approximately 550 feet downstream of Lake Pine Drive.	*387	*383
			Approximately 1,275 feet downstream of Lake Pine Drive.	*384	*383
Maps available for inspection at the Engineering Department, 318 North Academy, Cary, North Carolina. Send comments to Mr. Bill Coleman, Town Manager of the Town of Cary, P.O. Box 8005, Cary, North Carolina 27512–8005.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 1, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–27656 Filed 11–07–95; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–165; RM–8703]

Radio Broadcasting Services; Elberton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Chase Communications seeking the allotment of Channel 286A to Elberton, GA, as the community's second local FM service. Channel 286A can be allotted to Elberton in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 kilometers (7.7 miles) north, at coordinates 33–59–59 North Latitude and 82–51–36 West Longitude, to avoid short-spacings to Stations WCCP-FM, Channel 285A, Clemson, SC, and WHEL, Channel 286A, Helen, GA.

DATES: Comments must be filed on or before December 26 , 1995, and reply comments on or before January 10, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gordon K. Van Mol, Chase Communications, 804 Alcovy Way, Lawrenceville, GA 30243 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–165, adopted October 13, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

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

[FR Doc. 95–27574 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–68; RM–8629]

Radio Broadcasting Services; Berlin, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This action dismisses a petition for rule making filed by John P. Gillen requesting the allotment of Channel 235A at Berlin, Maryland. *See* 60 FR 27471, May 24, 1995. The proposal for Berlin, Maryland, was found to be technically defective as the only site meeting the Commission's spacing requirements is located in the Chinocoteague Bay. Since there is no usable site on land that also meets the Commission's spacing requirements for Channel 235A at Berlin, we are dismissing the *Notice* in this proceeding. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–68, adopted October 25, 1995, and released November 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27576 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 60, No. 216
Wednesday, November 8, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Final Listing of Recommendations and Statements Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: Final listing of Recommendations and Statements issued by the Administrative Conference of the United States (ACUS) between 1968 and 1995.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States, an independent advisory agency in the executive branch, has been issuing recommendations and statements on the improvement of the federal administrative process since 1968. Recommendations have been made to the President, agencies, Congress and the Judicial Conference, and are aimed at making the administrative process more efficient and more fair. Statements are more generalized positions on issues of federal administrative procedure. Over the years, the text of most of these recommendations and statements have been published in the Federal Register and, between 1973 and 1993, in the Code of Federal Regulations at 1 CFR Parts 305 and 310. In recent years, budget limitations have prevented the Administrative Conference from publishing the text of its recommendations and statements in the CFR.

The Administrative Conference is closing its doors on October 31, 1995, because Congress has not appropriated funds for the agency. As a service to the public who may wish to find the text of the over 200 recommendations and statements ACUS has issued over the past 27 years, we are publishing a list containing the Federal Register citations for all of the recommendations and statements that have been published there in the past. The text of all ACUS recommendations and statements, including those never published in the Federal Register, can be found in the Conference's annual reports and the published volumes of Administrative Conference Recommendations and Reports, which are available at the Regional Federal Depository Libraries located in each state, the Library of Congress or its Law Library, and at the library of the Washington College of Law at The American University in Washington, DC. Similarly, the reports that served as a basis for the recommendations and statements are published in the ACUS Recommendations and Reports described above.

The Administrative Conference was a statutory advisory committee, a majority of whose members were from federal agencies; the others were from the private sector and academia. Administrative Conference recommendations and statements were developed through a process that involved preparation of a study on a particular topic of administrative law or procedure. Typically, a committee of the Administrative Conference considered the study, and with assistance of contract consultants and staff from the Office of the Chairman, developed proposed recommendations and statements. Those recommendations and statements were debated by the full membership of the Administrative Conference at its Plenary Sessions, which normally occurred twice a year. The adopted text became a formal Administrative Conference recommendation or statement.

Of the approximately 200 recommendations and statements adopted by the Administrative Conference during its history, over two-thirds were implemented in whole or in part. A digest describing the implementation of ACUS recommendations will be available at the Library of Congress or its Law Library and at the library of the Washington College of Law at The American University in Washington, DC.

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE

68–1	Adequate Hearing Facilities	Not published.
68–2	U.S. Government Organization Manual	Not published.
68–3	Parallel Table of Statutory Authority and Rules (2 CFR Ch. I)	Not published.
68–4	Consumer Bulletin	Not published.
68–5	Representation of the Poor in Agency Rulemaking of Direct Consequence to Them	38 FR 19782 (July 23, 1973).
68–6	Delegation of Final Decisional Authority Subject to Discretionary Review by the Agency	38 FR 19782 (July 23, 1973).
68–7	Elimination of Jurisdictional Amount Requirement in Judicial Review	Not published.
68–8	Judicial Review of Interstate Commerce Commission Orders	Not published.
69–1	Statutory Reform of the Sovereign Immunity Doctrine	Not published.
69–2	Judicial Enforcement of Orders of the National Labor Relations Board	Not published.
69–3	Publication of a ''Guide to Federal Reporting Requirements''	Not published.
69–4	Analytical Subject-Indexes to Selected Volumes of the Code of Federal Regulations	Not published.
69–5	Elimination of Duplicative Hearings in FAA Safety De-certification Cases	Not published.
69–6	Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies .	38 FR 19782 (July 23, 1973).
69–7	Consideration of Alternatives in Licensing Procedures	38 FR 19782 (July 23, 1973).
69–8	Elimination of Certain Exemptions from the APA Rulemaking Requirements	38 FR 19782 (July 23, 1973).
69–9	Recruitment and Selection of Hearing Examiners; Continuing Training for Government Attorneys and Hearing Examiners; Creation of a Center for Continuing Legal Education.	38 FR 19782 (July 23, 1973).
70–1	Parties Defendant	Not published.
70–2	SEC No-Action Letters Under Section 4 of the Securities Act of 1933	Not published.
70–3	Summary Decision in Agency Adjudication	38 FR 19782 (July 23, 1973).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

70–4	Discovery in Agency Adjudication	38 FR 19782 (July 23, 1973).
70–5	Practices and Procedures under the Renegotiation Act of 1951	Not published.
71–1	Interlocutory Appeal Procedures	38 FR 19782 (July 23, 1973).
71–2	Principles and Guidelines for Implementation of the Freedom of Information Act	38 FR 19782 (July 23, 1973).
71–3	Articulation of Agency Policies	38 FR 19782 (July 23, 1973).
71–4	Minimum Procedures for Agencies Administering Discretionary Grant Programs	38 FR 19782 (July 23, 1973).
71–5	Procedure of the Immigration and Naturalization Service in Respect to Change-of-Status Applications.	Not published.
71–6	Public Participation in Administrative Hearings	38 FR 19782 (July 23, 1973).
71–7	Rulemaking on a Record by the Food and Drug Administration	Not published.
71–8	Modification and Dissolution of Orders and Injunctions	38 FR 19782 (July 23, 1973).
71–9	Enforcement of Standards in Federal Grant-In-Aid Programs	38 FR 19782 (July 23, 1973).
72–1	Broadcast of Agency Proceedings	38 FR 19782 (July 23, 1973).
72–2	Conflict-Of-Interest Problems in Dealing with Natural Resources of Indian Tribes	Not published.
72–3	Procedures of the United States Board of Parole	Not published.
72–4	Suspension and Negotiation of Rate Proposals by Federal Regulatory Agencies	38 FR 19782 (July 23, 1973).
72–5	Procedures for the Adoption of Rules of General Applicability	38 FR 19782 (July 23, 1973).
72–6	Civil Money Penalties as a Sanction	38 FR 19782 (July 23, 1973).
72–7	Pre-induction Review of Selective Service Classification Orders and Related Procedural Matters	Not published.
72–8	Adverse Actions against Federal Employees	38 FR 19782 (July 23, 1973).
73–1	Adverse Agency Publicity	38 FR 16839 (June 27, 1973).
73–2	Labor Certification of Immigrant Aliens	38 FR 16840 (June 27, 1973).
73–3	Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation.	38 FR 16840 (June 27, 1973).
73–4	Administration of Antidumping Law by the Department of the Treasury	39 FR 4846 (Feb. 7, 1974).
73–5	Elimination of the ''Military or Foreign Affairs Function'' Exemption From APA Rulemaking Requirements.	39 FR 4847 (Feb. 7, 1974).
73–6	Procedures for Resolution of Environmental Issues in Licensing Proceedings	39 FR 4848 (Feb. 7, 1974).
74–1	Subpena Power in Formal Rulemaking and Formal Adjudication	39 FR 23041 (June 26, 1974).
74–2	Procedures for Discretionary Distribution of Federal Assistance	39 FR 23041 (June 26, 1974).
74–3	Procedures for the Department of the Interior with Respect to Mining Claims on Public Lands ...	39 FR 23043 (June 26, 1974).
74–4	Preenforcement Judicial Review of Rules of General Applicability	39 FR 23044 (June 26, 1974).
75–1	Licensing Decisions of the Federal Banking Agencies	40 FR 27925 (July 2, 1975).
75–2	Affirmative Action for Equal Employment Opportunity in Nonconstruction Employment	40 FR 27926 (July 2, 1975).
75–3	The Choice of Forum for Judicial Review of Administrative Action	40 FR 27926 (July 2, 1975).
75–4	Procedures to Ensure Compliance by Federal Facilities with Environmental Quality Standards ..	40 FR 27928 (July 2, 1975).
75–5	Internal Revenue Service Procedures: The Audit and Settlement Processes	41 FR 3982 (Jan. 27, 1976).
75–6	Internal Revenue Service Procedures: Collection of Delinquent Taxes	41 FR 3982 (Jan. 27, 1976).
75–7	Internal Revenue Service Procedures: Civil Penalties	41 FR 3984 (Jan. 27, 1976).
75–8	Internal Revenue Service Procedures: Tax Return Confidentiality	41 FR 3985 (Jan. 27, 1976).
75–9	Internal Revenue Service Procedures: Taxpayer Services and Complaints	41 FR 3986 (Jan. 27, 1976).
75–10	Internal Revenue Service Procedures: The IRS Summons Power	41 FR 3987 (Jan. 27, 1976).
76–1	The Exception from Mandatory Retirement Exception for Certain Presidential Appointees	41 FR 29653 (July 19, 1976) and 41 FR 30319 (July 23, 1976).
76–2	Strengthening Informational and Notice-Giving Functions of the ''Federal Register''	41 FR 29653 (July 19, 1976).
76–3	Procedures in Addition to Notice and the Opportunity for Comment in Informal Rulemaking	41 FR 29654 (July 19, 1976).
76–4	Judicial Review under the Clean Air Act and Federal Water Pollution Control Acts	41 FR 56757 (Dec. 30, 1976).
76–5	Interpretive Rules of General Applicability and Statements of General Policy	41 FR 56769 (Dec. 30, 1976).
77–1	Legislative Veto of Administrative Regulations	42 FR 54251 (Oct. 5, 1977).
77–2	Judicial Review of Customs Service Actions	42 FR 54251 (Oct. 5, 1977).
77–3	Ex Parte Communications in Informal Rulemaking Proceedings	42 FR 54253 (Oct. 5, 1977).
78–1	Reduction of Delay in Ratemaking Cases	43 FR 27507 (June 26, 1978).
78–2	Procedures for Determining Social Security Disability Claims	43 FR 27058 (June 26, 1978).
78–3	Time Limits on Agency Actions	43 FR 27509 (June 26, 1978).
78–4	Federal Agency Interaction with Private Standard-Setting Organizations in Health and Safety Regulation.	44 FR 1357 (Jan. 5, 1979).
79–1	Hybrid Rulemaking Procedures of the Federal Trade Commission	44 FR 38817 (July 3, 1979).
79–2	Disputes Respecting Federal-State Agreements for Administration of the Supplemental Social Security Income Program.	44 FR 38823 (July 3, 1979).
79–3	Agency Assessment and Mitigation of Civil Money Penalties	44 FR (38824 (July 3, 1979).
79–4	Public Disclosure Concerning the Use of Cost-Benefit and Similar Analyses in Regulation	44 FR 38826 (July 3, 1979), and FR 7755 (Aug. 14, 1979)
79–5	Hybrid Rulemaking Procedures of the Federal Trade Commission: Administration of the Program to Reimburse Participants' Expenses.	45 FR 2307 (Jan. 11, 1980).
79–6	Elimination of the Presumption of Validity of Agency Rules and Regulations in Judicial Review, as Exemplified by the Bumpers Amendment.	45 FR 2308 (Jan. 11, 1980).
79–7	Appropriate Restrictions on Participation of a Former Agency Official in Matters Involving the Agency.	45 FR 2309 (Jan. 11, 1980).
80–1	Trade Regulation Rulemaking Under Magnuson-Moss Warranty-Federal Trade Commission Improvement Act.	45 FR 46772 (July 11, 1980).
80–2	Enforcement of Petroleum Price Regulations	45 FR 46774 (July 11, 1980).
80–3	Interpretation and Implementation of the Federal Advisory Committee Act	45 FR 46774 (July 11, 1980).
80–4	Decisional Officials' Participation In Rulemaking Proceedings	45 FR 46776 (July 11, 1980).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

80–5	Eliminating or Simplifying the ''Race to the Courthouse'' in Appeals from Agency Action	45 FR 84954 (Dec. 24, 1980).
80–6	Intragovernmental Communications in Informal Rulemaking Proceedings	45 FR 86407 (Dec. 31, 1980).
81–1	Procedures for Assessing and Collecting Freedom of Information Act Fees	46 FR 62806 (Dec. 29, 1981).
81–2	Current Versions of the Bumpers Amendment	46 FR 62806 (Dec. 29, 1981).
82–1	Exemption (b)(4) of the Freedom of Information Act	47 FR 30702 (July 15, 1982).
82–2	Resolving Disputes under Federal Grant Programs	47 FR 30704 (July 15, 1982).
82–3	Federal Venue Provisions Applicable to Suits Against the Federal Government	47 FR 30706 (July 15, 1982).
82–4	Procedures for Negotiating Proposed Regulations	47 FR 30708 (July 15, 1982).
82–5	Federal Regulation of Cancer-causing Chemicals	47 FR 30710 (July 15, 1982).
82–6	Federal Officials' Liability for Constitutional Violations	47 FR 58208 (Dec. 30, 1982).
82–7	Judicial Review of Rules in Enforcement Proceedings	47 FR 58208 (Dec. 30, 1982).
83–1	The Certification Requirement in the Contract Disputes Act	48 FR 31179 (July 7, 1983).
83–2	The ''Good Cause'' Exemption from APA Rulemaking Requirements	48 FR 31180 (July 7, 1983).
83–3	Agency Structure for Review of Decisions of Presiding Officers Under the Administrative Procedure Act.	48 FR 57461 (Dec. 30, 1983).
83–4	Use of the Freedom of Information Act for Discovery Purposes	48 FR 57463 (Dec. 30, 1983).
84–1	Public Regulation of Siting of Industry Development Projects	49 FR 29938 (July 25, 1984).
84–2	Procedures for Product Recalls	49 FR 29940 (July 25, 1984).
84–3	Improvements in the Administration of the Government in the Sunshine Act	49 FR 29942 (July 25, 1984).
84–4	Negotiated Cleanup of Hazardous Waste Sites Under CERCLA	49 FR 29942 (July 25, 1984).
84–5	Preemption of State Regulation by Federal Agencies	49 FR 49838 (Dec. 24, 1984).
84–6	Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings.	49 FR 49838 (Dec. 24, 1984).
84–7	Administrative Settlement of Tort and Other Monetary Claims Against the Government	49 FR 49840 (Dec. 24, 1984).
85–1	Legislative Preclusion of Cost/Benefit Analysis	50 FR 28363 (July 12, 1985).
85–2	Agency Procedures for Performing Regulatory Analysis of Rules	50 FR 28364 (July 12, 1985).
85–3	Coordination of Public and Private Enforcement of Environmental Laws	50 FR 28366 (July 12, 1985).
85–4	Administrative Review in Immigration Proceedings	50 FR 52894 (Dec. 27, 1985).
85–5	Procedures for Negotiating Proposed Regulations	50 FR 52895 (Dec. 27, 1985).
86–1	Nonlawyer Assistance and Representation	51 FR 25641 (July 16, 1986).
86–2	Use of the Federal Rules of Evidence in Federal Agency Adjudications	51 FR 25642 (July 16, 1986).
86–3	Agencies' Use of Alternative Means of Dispute Resolution	51 FR 25643 (July 16, 1986).
86–4	The Split-Enforcement Model for Agency Adjudication	51 FR 46986 (Dec. 30, 1986).
86–5	Medicare Appeals	51 FR 46987 (Dec. 30, 1986).
86–6	Petitions for Rulemaking	51 FR 46988 (Dec. 30, 1986).
86–7	Case Management as a Tool for Improving Agency Adjudication	51 FR 46989 (Dec. 30, 1986).
86–8	Acquiring the Services of ''Neutrals'' for Alternative Means of Dispute Resolution	51 FR 46990 (Dec. 30, 1986).
87–1	Priority Setting and Management of Rulemaking by the Occupational Safety and Health Administration.	52 FR 23629 (June 24, 1987).
87–2	Federal Protection of Private Sector Health and Safety Whistleblowers	52 FR 23631 (June 24, 1987).
87–3	Agency Hiring of Private Attorneys	52 FR 23632 (June 24, 1987).
87–4	User Fees	52 FR 23634 (June 24, 1987).
87–5	Arbitration in Federal Programs	52 FR 23635 (June 24, 1987).
87–6	State-Level Determinations in Social Security Disability Cases	52 FR 49142 (Dec. 30, 1987).
87–7	A New Role for the Social Security Appeals Council	52 FR 49143 (Dec. 30, 1987).
87–8	National Coverage Determinations under the Medicare Program	52 FR 49144 (Dec. 30, 1987).
87–9	Dispute Procedures in Federal Debt Collection	52 FR 49146 (Dec. 30, 1987).
87–10	Regulation by the Occupational Safety and Health Administration	52 FR 49147 (Dec. 30, 1987).
87–11	Alternatives for Resolving Government Contract Disputes	52 FR 49148 (Dec. 30, 1987).
87–12	Adjudication Practices and Procedures by the Federal Bank Regulatory Agencies	52 FR 49151 (Dec. 30, 1987).
88–1	Presidential Transition Workers' Code of Ethical Conduct	53 FR 26026 (July 11, 1988).
88–2	Federal Government Indemnification of Government Contractors	53 FR 26027 (July 11, 1988).
88–3	Federal Reserve Board's Handling of Applications Under the Bank Holding Company Act	53 FR 26028 (July 11, 1988).
88–4	Deferred Taxation for Conflict-of-Interest Divestitures	53 FR 26029 (July 11, 1988).
88–5	Agency Use of Settlement Judges	53 FR 26030 (July 11, 1988).
88–6	Judicial Review of Preliminary Challenges to Agency Action	53 FR 39585 (Oct. 11, 1988).
88–7	Valuation of Human Life in Regulatory Decisionmaking	53 FR 39586 (Oct. 11, 1988).
88–8	Resolution of Claims Against Savings Receiverships	53 FR 39587 (Oct. 11, 1988).
88–9	Presidential Review of Agency Rulemaking	54 FR 5207 (Feb. 2, 1989).
88–10	Federal Agency Use of Computers in Acquiring and Releasing Information	54 FR 5209 (Feb. 2, 1989).
88–11	Encouraging Settlements by Protecting Mediator Confidentiality	54 FR 5211 (Feb. 2, 1989).
89–1	Peer Review and Sanctions in the Medicare Program	54 FR 28965 (July 10, 1989).
89–2	Contracting Officers' Management of Disputes	54 FR 28967 (July 10, 1989).
89–3	Conflict-of-Interest Requirements for Federal Advisory Committees	54 FR 28969 (July 10, 1989).
89–4	Asylum Adjudication Procedures	54 FR 28972 (July 10, 1989).
89–5	Achieving Judicial Acceptance of Agency Statutory Interpretations	54 FR 28973 (July 10, 1989).
89–6	Public Financial Disclosure by Executive Branch Officials	54 FR 28973 (July 10, 1989).
89–7	Federal Regulation of Biotechnology	54 FR 53494 (Dec. 29, 1988).
89–8	Agency Practices and Procedures for the Indexing and Public Availability of Adjudicatory Decisions.	54 FR 53495 (Dec. 29, 1988).
89–9	Processing and Review of Visa Denials	54 FR 53496 (Dec. 29, 1988).
89–10	Improved Use of Medical Personnel in Social Security Disability Determinations	54 FR 53496 (Dec. 29, 1988).
90–1	Civil Money Penalties for Federal Aviation Violations	55 FR 34209 (Aug. 22, 1990).

RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE—Continued

90–2	The Ombudsman in Federal Agencies	55 FR 34211 (Aug. 22, 1990).
90–3	Use of Risk Communication by Regulatory Agencies in Protecting Health, Safety and the Environment.	55 FR 34212 (Aug. 22, 1990).
90–4	Social Security Disability Program Appeals Process: Supplementary Recommendation	55 FR 34213 (Aug. 22, 1990).
90–5	Federal Agency Electronic Records Management and Archives	55 FR 53270 (Dec. 28, 1990).
90–6	Use of Simplified Proceedings in Enforcement Actions Before the Occupational Safety and Health Review Commission.	55 FR 53271 (Dec. 28, 1990).
90–7	Administrative Responses to Congressional Demands for Sensitive Information	55 FR 53272 (Dec. 28, 1990).
90–8	Rulemaking and Policymaking in the Medicaid Program	55 FR 53273 (Dec. 28, 1990).
91–1	Federal Agency Cooperation with Foreign Government Regulators	56 FR 33842 (July 24, 1991).
91–2	Fair Administrative Procedure and Judicial Review in Commerce Department Export Control Proceedings.	56 FR 33844 (July 24, 1991).
91–3	The Social Security Representative Payee Program	56 FR 33847 (July 24, 1991).
91–4	The National Vaccine Injury Compensation Program	56 FR 33850 (July 24, 1991).
91–5	Facilitating the Use of Rulemaking by the National Labor Relations Board	56 FR 33851 (July 24, 1991).
91–6	Improving the Supervision of Safety and Soundness of Government-Sponsored Enterprises	56 FR 33852 (July 24, 1991).
91–7	Implementation of Farmer-Lender Mediation by the Farmers Home Administration	56 FR 67140 (Dec. 30, 1991).
91–8	Adjudication of Civil Penalties Under the Federal Aviation Act.	56 FR 67141 (Dec. 30, 1991).
91–9	Specialized Review of Administrative Action	56 FR 67143 (Dec. 30, 1991).
91–10	Administrative Procedures in Antidumping and Countervailing Duty Cases	56 FR 67144 (Dec. 30, 1991).
92–1	The Procedural and Practice Rule Exemption from the APA Notice-and-Comment Rulemaking Requirements.	57 FR 30102 (July 8, 1992).
92–2	Agency Policy Statements	57 FR 30103 (July 8, 1992).
92–3	Enforcement Procedures under the Fair Housing Act	57 FR 30104 (July 8, 1992).
92–4	Coordination of Migrant and Seasonal Farmworker Service Programs	57 FR 30106 (July 8, 1992).
92–5	Streamlining Attorney's Fee Litigation under the Equal Access to Justice Act	57 FR 30108 (July 8, 1992).
92–6	Implementation of the Noise Control Act	57 FR 30110 (July 8, 1992).
92–7	The Federal Administrative Judiciary	57 FR 61760 (Dec. 29, 1992).
92–8	Administration of the Office Juvenile Justice and Delinquency Prevention's Formula Grant Program.	57 FR 61765 (Dec. 29, 1992).
92–9	De Minimis Settlements Under Superfund	57 FR 61766 (Dec. 29, 1992).
93–1	Use of APA Formal Procedures in Civil Money Penalty Proceedings	58 FR 45409 (Aug. 30, 1993).
93–2	Review of Prompt Corrective Action Decisions by Banking Regulators	58 FR 45410 (Aug. 30, 1993).
93–3	Peer Review in the Award of Discretionary Grants	58 FR 45412 (Aug. 30, 1993).
93–4	Improving the Environment for Agency Rulemaking	58 FR 4670 (Feb. 1, 1994).
93–5	Procedures for Regulation of Pesticides	58 FR 4675 (Feb. 1, 1994).
94–1	Use of Audited Self-Regulation as a Regulatory Technique	59 FR 44701 (Aug. 30, 1994).
94–2	Reforming the Government's Procedure for Civil Forfeiture	59 FR 44703 (Aug. 30, 1994).
95–1	Application and Modifications of FOIA Exemption 8	60 FR 13692 (Mar. 14, 1995).
95–2	Debarment and Suspension from Federal Programs	60 FR 13695 (Mar. 14, 1995).
95–3	Review of Existing Agency Regulations	60 FR 43109 (Aug. 18, 1995).
95–4	Procedures for Noncontroversial and Expedited Rulemaking	60 FR 43110 (Aug. 18, 1995).
95–5	Government Contract Bid Protests	60 FR 43113 (Aug. 18, 1995).
95–6	ADR Confidentiality and the Freedom of Information Act	60 FR 43115 (Aug. 18, 1995).
95–7	Use of Mediation under the Americans with Disabilities	60 FR 43115 (Aug. 18, 1995).

STATEMENTS

1.	Views of the Administrative Conference on the ''Report on Selected Independent Regulatory Agencies'' of the President's Advisory Council on Executive Organization.	Not published.
2	Statement of the Administrative Conference on the ABA Proposals to amend the Administrative Procedure Act.	38 FR 16841 (June 27, 1973) as amended at 39 FR 23045 (June 26, 1974).
3	Statement of the Administrative Conference on ABA Resolution No. 1 to Amend the Definition of a Rule in the Administrative Procedure Act.	39 FR 4849 (Feb. 7, 1974).
4	Strengthening Regulatory Agency Management Through Seminars for Agency Officials	40 FR 27928 (July 2, 1975).
5	Statement on Procedures to Deal with Emergency Shortages of Natural Gas	41 FR 56770 (Dec. 30, 1976).
6	Resolution Concerning Congressional Termination of Pending Administrative Proceedings at the Federal Trade Commission.	45 FR 2310 (Jan. 11, 1980).
7	Views of the Administrative Conference Proposals Pending in Congress to Amend the Information Rulemaking Provisions of the Administrative Procedure Act.	47 FR 30715 (July 15, 1982).
8	Statement of the Administrative Conference on Discipline of Attorneys Practicing before Federal Agencies.	47 FR 58210 (Dec. 30, 1982).
9	Statement on Guidelines for Agency Policy Articulation	48 FR 31181 (July 7, 1983).
10	Statement on Agency Use of an Exceptions Process to Formulate Policy	48 FR 57464 (Dec. 30, 1983).
11	Statement on Hearing Procedures for the Resolution of Scientific Issues	50 FR 52896 (Dec. 27, 1985).
12	Statement on Resolution of Freedom of Information Act Disputes	52 FR 23636 (June 24, 1987).
13	Statement on Dispute Resolution Procedure in Reparations and Similar Cases	53 FR 26032 (July 11, 1988).
14	Statement on Mass Decisionmaking Programs: The Alien Legalization Experience	54 FR 28975 (July 10, 1989).
15	Procedures for Resolving Federal Personnel Disputes	54 FR 53498 (Dec. 29, 1989).

STATEMENTS—Continued

16	Right to Consult with Agency Counsel in Agency Investigations	59 FR 4677 (Feb. 1, 1994).
17	Comments on SSA's Reengineering of the Disability Process	59 FR 44704 (Aug. 30, 1994).

Dated: October 31, 1995.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 95–27473 Filed 11–7–95; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Market Promotion Program, Fiscal Year 1996

AGENCY: Commodity Credit Corporation. USDA.

ACTION: Notice.

SUMMARY: This notice announces the Market Promotion Program for Fiscal Year 1996.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, Washington, D.C. 20250–1042, Telephone: (202) 720–5521.

SUPPLEMENTARY INFORMATION: Section 203 of the Agricultural Trade Act of 1978, as amended, directs the Commodity Credit Corporation (CCC) to ''carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations that implement a foreign market development program.'' Assistance under this program may be provided in the form of funds of, or commodities owned by, the CCC, as determined appropriate by the Secretary.

The Market Promotion Program (MPP) will be implemented in accordance with the regulations set forth in 7 C.F.R. part 1485, February 1, 1995. The Administrator of the Foreign Agricultural Service (FAS), who is Vice President of CCC, is authorized to enter into agreements with nonprofit agricultural trade organizations, nonprofit state regional trade groups, agricultural cooperatives, state agencies and U.S. commercial entities to share the costs of approved overseas marketing and promotion activities that are intended to develop, maintain or expand commercial export markets for U.S. agricultural commodities and products. CCC will enter into agreements only where the eligible agricultural commodity is comprised of at least 50 percent U.S. origin by weight, exclusive of added water. CCC may provide assistance for brand promotion activities.

Eligible entities desiring to participate in the MPP must submit an application (an original and two copies) containing information required by the MPP regulations.

All applications (an original and two copies) must be either hand delivered or sent by postal delivery and must be received by 5:00 p.m. eastern time, Tuesday, January 16, 1996, at the following address:

Hand Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1042

Postal Delivery: U.S. Department of Agriculture, Marketing Operations Staff, Ag Box 1042, Washington, D.C. 20250–1042.

For more detailed information regarding the application process or other terms and requirements of the MPP, contact the Marketing Operations Staff, FAS, USDA at the address above or telephone (202) 720–5521. Comments regarding the conduct of the MPP may be directed to either address as applicable.

Signed at Washington, DC, on October 23, 1995.

August Schumacher,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 95–27671 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–10–M

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension of and revision to a currently approved information collection procedure. This information is contained in a petition which may be filed with the Department of Agriculture (USDA) requesting emergency relief from increased, injurious imports of certain perishable products entering the United States duty-free from beneficiary countries under the Andean Trade Preference Act.

DATES: Comments on this notice must be received on or before January 8, 1996.

ADDRESSES: Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1021, South Building, 14th and Independence Ave., S.W., Washington, D.C. 20205.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader for Import Policies, Import Policies and Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250; Telephone: (202) 720–1330.

SUPPLEMENTARY INFORMATION:

Title: Emergency Relief from Duty-Free Imports of Perishable Products from Andean Countries.

OMB Number: 0551–0033.

Expiration Date of Approval: April 30, 1996.

Type of Request: Extension of and revision to a currently approved information collection:

Abstract: The Andean Trade Preference Act (P.L. 102–182, 105 Stat. 1236 (19 U.S.C. 2101–3216) (the ''Act''), authorized the President to proclaim duty-free treatment for imports from Bolivia, Colombia, Ecuador, and Peru, except for certain specifically excluded products. Section 204(e) of the Act provides, in part, that if a petition is filed with the United States International Trade Commission pursuant to provision of section 201 of the Trade Act of 1974, as amended (19 U.S.C. 2251), regarding a perishable product and alleging injury from imports from beneficiary countries, then a petition may also be filed with the Secretary of Agriculture requesting that emergency relief be granted by the President.

Under 7 CFR 1540.43, an entity seeking emergency relief may submit a request to the administrator, FAS, providing appropriate information and data to permit the Secretary of Agriculture to make a determination whether to recommend to the President

to take emergency action. The request should contain a description of the imported perishable product concerned and the country of origin; data showing that increased imports of such perishable product are the substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing a perishable product like or directly competitive with the imported product; and provide a statement indicating why emergency action would be warranted. The information collected is used by FAS to prepare an assessment that will assist the Secretary in making his determination.

Estimate of Burden: Public reporting burden for this collection of information is estimated $3,932.

Respondents: Non-profit institutions, businesses, or farms.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 120 hours.

Copies of the information collection can be obtained from Pamela Hopkins, Agency Collection Coordinator, at (202) 720–6713.

REQUESTS FOR COMMENTS: The public is invited to submit comments and suggestions to the above address regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 23, 1995.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–27672 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on November 21, 1995 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) process, methods and criteria to establish priorities among major river basins in the province for management and restoration work; (2) review and discussion of the tentative watershed restoration program for the Mt. Baker-Snoqualmie National Forest in fiscal year 1996; (3) additional discussion of the proposed alternatives for management of the Snoqualmie Pass Adaptive Management Area and of the draft Plum Creek Timber Company Habitat Conservation Plan; (4) update on issues related to Section 2001 of P.L. 103–327 (Rescission Bill); (5) issues for the Advisory Committee to consider during the first half of 1996; (6) Access and Travel Management subcommittee report; (7) other topics as appropriate; and, (8) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: November 2, 1995.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 95–27645 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 7, 1995. The meeting will be in the North McKenzie Conference Room, at the Valley River Inn; Eugene, Oregon; phone (503) 687–0123; located in the Valley River Center. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 4:00 p.m. Topics tentatively scheduled on the agenda include: (1) Watershed Restoration and Jobs-in-the-Woods Coordination/Review Process; (2) District/Forest Decision Authority Issue; (3) Presentation on Central Cascades Adaptive Management Area activities.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during a public forum. The public forum will follow the agenda topics mentioned above and will occur in the afternoon. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon; 503–465–6924.

Dated: November 2, 1995.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 95–27643 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

Forest Service

Outfitting and Guiding Permit Administration and Fees

AGENCY: Forest Service, USDA.

ACTION: Correction of final policy.

SUMMARY: The Forest Service is making technical corrections to the final policy published June 12, 1995 (60 FR 30830), governing issuance and administration of permits and assessment of fees for outfitting and guiding activities on National Forest System lands.

EFFECTIVE DATE: This corrected policy is effective November 8, 1995.

FOR FURTHER INFORMATION CONTACT: John Shilling, (202) 205–1426, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

SUPPLEMENTARY INFORMATION: The final policy published June 12, 1995 (60 FR 30830), on outfitting and guiding permit administration and fees on National Forest System lands contained a few technical errors that must be corrected: (1) To clarify that the minimum fee for outfitting and guiding is set every three years, beginning in 1993; and (2) to ensure consistency with the requirements of the Wilderness Act (16 U.S.C. 1131 *et seq.*) as interpreted in applicable court decisions with respect to caches in wilderness and to development, improvements, and installations in wilderness.

The corrected policy is being issued by amendment to chapters 30 and 40 of Forest Service Handbook 2709.11, Special Uses Handbook. The corrected policy reads as follows:

1. *Chapter 30, Fee Determination, Section 37.05, Definition for ''Revenue Additions,'' paragraph 2:* ''The value of

gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.''

The agency has removed the words ''or at a discount'' from this definition because goods, services, or privileges provided at a discount are not gratuities, but rather are a form of revenue. The value of goods, services, or privileges provided at a discount is subsumed in gross revenue for the purpose of fee calculation.

2. *Chapter 30, Fee Determination, Section 37.21a:* ''The minimum fee for outfitting and guiding on National Forest System lands is $70 annually per permit for 1993–1995. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management shall adjust the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index.''

Formerly, the time period specified in the supplementary information and policy was 1993–1996, which spans four years. Because the agency's intent was to establish a minimum fee every three years, the time period has been changed accordingly to 1993–1995. The policy, which previously stated that the Director ''adjusts'' the minimum fee every three years, also has been revised to use ''shall adjust'' to convey mandatory action by the Director.

3. *Chapter 40, Special Uses Administration, Section 41.53b, paragraph 2:* ''Do not authorize any development or permanent improvements in non-wilderness on the National Forest System for outfitting and guiding services, except for structures, improvements, or installations with negligible value that have minimal impact on forest resources, such as hitching posts, corrals, tent frames, and shelters.''

The agency has added ''in non-wilderness'' to distinguish the policy in this paragraph on development and permanent improvements in non-wilderness, from the policy in the following paragraph 3 on development and permanent improvements in wilderness. The agency has removed ''temporary,'' which formerly modified ''structures or improvements or installations,'' because it was inconsistent with the reference to ''development or permanent improvements'' at the beginning of this paragraph. For consistency in wording, the agency has substituted a comma for the word ''or'' between ''structures'' and ''improvements'' and added a comma after ''improvements.'' The agency has added ''that have minimal impact on forest resources'' to further clarify when development or permanent improvements may be authorized in non-wilderness.

4. *Chapter 40, Special Uses Administration, Section 41.53b, paragraph 3:* ''Do not authorize any development, improvements, or installations in wilderness on the National Forest System for the purpose of convenience to the holder or the holder's clients. Do not authorize any caches in wilderness. The authorized officer may not authorize permanent structures, improvements, or installations in wilderness unless they are necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1133c).''

For consistency in wording with related direction on non-wilderness in the preceding paragraph 2 of this section, the agency has added an ''s'' to ''improvement'' and ''installation'' and also has added ''on the National Forest System'' after ''in wilderness'' in the first sentence of paragraph 3. To ensure consistency with the requirements of the Wilderness Act as interpreted in applicable court decisions, the agency has added a prohibition on authorizing caches in wilderness and has changed ''temporary'' to ''permanent'' as a modifier for ''structures, improvements, or installations in wilderness'' in the last sentence. The agency also has corrected the citation in the last sentence from 16 U.S.C. 1121 (note) to 16 U.S.C. 1133c.

Dated: November 2, 1995.

Mark A. Reimers,

Acting Chief.

[FR Doc. 95–27617 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950911228–5258–02]

The American Community Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182 and 225, I have determined that data from The American Community Survey are needed to evaluate a design to collect timely data for small areas and small subpopulations on a continual basis rather than every ten years. Government agencies use these data to distribute funding for various programs. The American Community Survey will also provide data for agencies to evaluate the performance of programs. The general public uses the data to examine information like housing quality, commuting patterns, and regional age distributions for planning purposes. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Lawrence S. McGinn, Chief, Continuous Measurement Office, on (301) 763–8327.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from this survey will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations. Currently, the decennial census is the only source of data available for small area levels and, therefore, these data are collected only once every ten years. A continuous measurement system also would provide a mechanism for identifying and sampling subpopulation groups for future surveys which will be of great benefit to the Federal Statistical System and provide data needed by other agencies.

This survey will be a full-scale implementation of continuous measurement in six test sites. The survey will also include a national sample to test response rates and the Census Bureau's ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

The Census Bureau will select the housing units for the survey from a sample of six sites selected to test full continuous measurement operations and a sample from designated areas around the country to obtain mail response rates. The Bureau will mail questionnaires to the households covered by this survey and require the submission as soon as possible after receipt. Participation of the selected households will be mandatory in accordance with the provisions of Title 13.

This survey was approved by the Office of Management and Budget (OMB) for public use, in accordance

with the Paperwork Reduction Act, Public Law 96–511, as amended, and was given OMB approval number 0607–0810. A Notice of Consideration was published in the Federal Register on September 18, 1995, Volume 60, Number 180, page 48097, informing the public of our intent to conduct this survey and inviting public comment. No comments on the Notice of Consideration were received. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

Based upon the foregoing, I have directed that a test be conducted for the purpose of collecting these data for evaluation of the procedures related to a continuous measurement operation.

Dated November 1, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–27670 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 103095F]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on November 28–30, 1995.

ADDRESSES: Both meetings will be held at the Conference Room of Joyuda Beach Resort, Rd. 102, Km. 11.7, Joyuda, Cabo Rojo, PR.

Council Address: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 87th regular public meeting to discuss the Third Amendment to the Reef Fish Fishery Management Plan and the Marine Conservation Districts, among other topics.

The Council will convene on November 29, 1995, from 9:00 a.m. until 5:00 p.m., and on November 30, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on November 28, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available during the Council meeting (November 29–30, 1995). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, Executive Director, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 1, 1995.

Richard W. Surdi,

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

[FR Doc. 95–27580 Filed 11–07–95; 8:45 am]

BILLING CODE 3510–22–F

Notice of the National Ocean Service's Discontinuation of the Production and Distribution of the Ocean Features Analysis (OFA), Sea Surface Temperature (SST) Analysis, and Surface Feature Tracking (SFT) Analysis as NOS Products

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, effective immediately, NOS is no longer producing and distributing the Ocean Features Analysis (OFA), Sea Surface Temperature (SST) Analysis, and Surface Feature Tracking (SFT) Analysis products.

FOR FURTHER INFORMATION CONTACT: Richard Barazotto, NOAA/Office of Ocean and Earth Sciences, Silver Spring, MD (301) 713–2981.

SUPPLEMENTARY INFORMATION: Since 1975, NOAA/NOS has produced the OFA for area covering the East Coast of the U.S. and Gulf of Mexico. The graphical analyses were produced five times per week and distributed via radio facsimile, subscription facsimile, and autopolling facsimile.

Since 1993, NOAA/NOS has produced high resolution SST analyses for an area covering the East Coast of the U.S. The analyses were produced twice per week and distributed via radiofacsimile and autopolling facsimile.

Since 1994, NOAA/NOS has produced SFT analyses for areas covering the East Coast of the U.S. and Gulf of Mexico. The analyses were produced once per week and distributed via autopolling facsimile. The OFA, SST and SFT products were also available via NOS' Ocean Product Branch's (OPB) Homepage on the World Wide Web of the Internet.

Over the past several years, there has been a gradual decrease in the funds available to support activities such as the OFA. In FY 1996, the budget line item that provides the source of revenue to support the production of the OFA and related products will sustain a 33% reduction in available funds. Consequently, NOS has terminated the production and distribution of OFA, SST and SFT products, effective October 1, 1995. In addition to the termination of this product line, the office that produces these products, OPB, was disestablished. The termination of the OFA and OPB are only two of several painful consequences resulting from FY 1995 and FY 1996 budget reductions.

The primary reason that NOS decided to terminate this suite of products, in response to its budget reductions, is that there are several government-produced oceanographic analyses, produced for different missions, that can be made available to the public as replacements for the OPB's products. For example, the Naval Oceanographic Office produces an OFA to satisfy its warfighting mission needs, and the National Hurricane Center produces both OFA and SST analyses to satisfy its life and property hurricane warning and forecast mission. A secondary consideration was the concern expressed by private sector organizations that these analysis products competed with value-added services and products that are produced and distributed for profit.

Although NOS will terminate this product line, Attachment 1 lists those government offices that currently either produce or distribute similar or related products. In addition, there are several private sector value-added companies that have related products and/or services. Attachment 2 lists private sector companies known to NOS that provide oceanographic value-added services and/or products.

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: Office of Ocean and Earth Sciences, N/OES, 1305 East-West Highway Silver Spring, MD 20910, fax 301–713–4392.

Dated: October 31, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Attachment (1)—Known Alternative Government Sources of Ocean Analysis Information

1. Sea Surface Temperature—global, regional, local at various resolutions depending on location (14km, 50km, and 100km)
   NOAA/NESDIS, 4401 Suitland Road, Room 2039, Suitland Federal Center, FOB #4, Suitland, MD 20233–0001, Point of Contact: Mr. John Sapper (301) 457–5195
   National Hurricane Center, 11691 S.W. 17th Street, Miami, FL 33165–2149, Point of Contact: Dr. Steven Baig (305) 229–9901
   Weather Service Forecast Office, 21 Grace Hopper Avenue, Stop 5, Monterey, CA 93943–5505, Point of Contact: Mr. Ernest Daghir (408) 656–1716
2. Ocean Thermal Structure Analysis (Ocean Features Analysis) for various areas such as Gulf of Mexico, Gulf Stream, etc.
   Naval Atlantic Meteorology and Oceanography Center, 9141 Third Avenue, Naval Air Station, Norfolk, VA 23511–2394, Point of Contact: Mr. Chuck Weigand (804) 444–4913, (Product available via radio facsimile)
   Naval Oceanographic Office (Code N2211), 1002 Balch Boulevard, Stennis Space Center, MS 39522, Point of Contact: Mr. Tom Sandidge (601) 688–4401
   National Hurricane Center, 11691 S.W. 17th Street, Miami, FL 33165, Point of Contact: Dr. Steven Baig (305) 229–9901, Fax (305) 229–9901
3. Retrospective Ocean Thermal Structure Analysis and Sea Surface Temperature Analysis for various areas and resolutions globally, regionally, and locally.
   NOAA/NESDIS, National Climatic Data Center, Federal Building, Asheville, NC 28801, Point of Contact: Mr. Tom Ross (704) 271–4994 ext 181

Attachment (2)—Value-Added Companies Known to NOS That Provide Oceanographic Products

(Should NOS become aware of additional sources, they will be identified in future announcements)

1. Weather and Marine USA Limited, 5049 Garfield Street N.W., Washington, DC 20016–3450, Attn: Dr. Lee Houchins (202) 966–5009
2. Weather Services Incorporated, 131A The Great Road, P.O. Box 890, Bedford, MA 01730, Attn: Mr. Ken Campbell (617) 275–8860
3. Bob Rice's Weather Window, 842 Sterling Road, Lancaster, MA 01523, Attn: Mr. Bob Rice (508) 365–3800
4. Offshore Services, 339 Herbertville Road, Bricktown, NJ 08724, Attn: Mr. Lenny Belcaro (908) 840–4900
5. Ocean Imaging, 201 Lomas Sante Fe Drive, Suite 370, Solana Beach, CA 92075, Attn: Mr. Mark Hess (619) 792–8529
6. Sea Space, 9240 Trade Place, Suite 100, San Diego, CA 92126, Attn: Dr. Robert Bernstein (619) 450–9542
7. ROFFS Ocean Fishing, 2871 S.W. 69th Court, Miami, FL 33155, Attn: Dr. Mitch Roffer (305) 262–8336 or (800) 677–7633
8. Gulf Weather Corporation, MTTC Building 1103, Stennis Space Center, MS 39529, Attn: Mr. Frank Schatzle (601) 688–3397

[FR Doc. 95–27653 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Dissemination of Patent Information

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Patent and Trademark Office (PTO) will hold a public meeting to gain input into how it can maximize the potential of its information dissemination program. In view of technology changes, revisions to the Office of Management and Budget (OMB) Circular A–130, and the Paperwork Reduction Act of 1995 (Public Law 104–13), the PTO will review existing policies, and will use input from this announced meeting to prepare a comprehensive information dissemination plan.

DATES: A meeting will be held on December 15, 1995, at 9:00 a.m.

Written comments must be submitted on or before December 31, 1995.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Attention: Wesley H. Gewehr, Administrator for Information Dissemination, Crystal Park 3, Suite 451, Washington, D.C. 20231, or fax to (703) 306–2737, or e-mail to larson@uspto.gov.

The meeting will be held in Suite 819 of Crystal Park 1, located at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jane S. Myers, Office of Electronic Information Products by telephone at (703) 306–2600, by fax at (703) 306–2737, by e-mail to larson@uspto.gov, or by mail to U. S. Patent and Trademark Office, Office of Electronic Information Products, Crystal Park 3, Suite 441, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Within thirty days following the meeting, copies of the minutes of the meeting may be obtained from the PTO Home Page (http://www.uspto.gov/), from the PTO bulletin board service (PTO BBS) at (703) 305–8950, or from the PTO, Office of Electronic Information Products, in Suite 441, Crystal Park 3, Arlington, Virginia.

The PTO last published final guidelines related to information dissemination in the Federal Register on Wednesday, May 3, 1989, and in the Official Gazette of the United States Patent and Trademark Office on Tuesday, May 30, 1989. The PTO also published a proposed Electronic Information Dissemination Policy for public comment in the Official Gazette of the United States Patent and Trademark Office on Tuesday, December 1, 1992. The final guidelines and the proposed policy are reprinted below, followed by a description of PTO's information dissemination activities.

Electronic Data Dissemination Policies and Guidelines (as published in the Federal Register on Wednesday, May 3, 1989, and in the Official Gazette of the United States Patent and Trademark Office on Tuesday, May 30, 1989)

Dissemination in Government Public Search Facilities and Depository Libraries

It is the goal of the PTO to achieve effective, widespread dissemination of information concerning patents and Federally registered trademarks to all segments of the U.S. public.

A. The dissemination goal will be accomplished directly by the PTO by providing electronic search and retrieval services to the public in search facilities located in the PTO, in other facilities which may be established by the Government and in Patent and Trademark Depository Libraries (PTDLs). PTDLs are Federal, State and local government, university or non-profit organization libraries designated by the PTO to offer public access to patent collections.

B. To the extent funding is authorized and appropriated, search and retrieval services will be provided in the PTO's search facilities and PTDLs either:

(1) by the PTO, using its own data bases, computers, communications equipment, and software, and/or

(2) by PTO contractors.

C. Access to commercial data bases that are available to the PTO's examiners, for example industry-specific data bases, will be furnished

either through an APS workstation or a terminal furnished by data base vendors in the PTO public search facilities at commercial rates, provided the user has established a commercial account with the data base vendor.

The PTO will not act as an agent for any data base vendor in providing training for, assisting in, or collecting fees for the use of such commercial data bases.

D. Services furnished in the PTO public search facilities and in PTDLs will be at no cost to the public for access to paper and microform records. The costs of accessing PTO owned electronic data bases and systems will be recouped from user fees set to recover the marginal costs of such services.

E. The type of service for public search and retrieval, either PTO or commercial services, will be chosen based on the method and criteria established by the 1983 revision to OMB Circular A–76, entitled ''Performance of Commercial Activities.''

Distribution of PTO Data for Commercial Dissemination

F. In addition to B and C above, the PTO will pursue its dissemination goal indirectly by encouraging the private sector firms in providing such services to the public outside the PTO search facilities and PTDLs.

G. Fees charged for bulk data developed by the PTO will be based on the marginal cost of providing such distribution services.

H. Arrangements will be non-exclusive. Bulk resale of PTO data will be permitted subject to the terms of each bulk data sales agreement.

I. Fees charged to the public for U.S. patent and trademark data products will be based on the marginal cost of providing such products.

J. The PTO will receive non-U.S. electronic patent data through exchange agreements with other patent offices and international intergovernmental organizations. In general, the PTO will not distribute such data, except in conjunction with services that may be provided by the PTO or its contractors in the PTO public search facilities and PTDLs. Rather, it will seek to have contractual arrangements established directly between the organization and the commercial data base vendor and will not act as a service agent or representative unless there is a special need that cannot be met otherwise.

Information Dissemination: General Statement of Principles (as published in the Official Gazette of the United States Patent and Trademark Office on Tuesday, December 1, 1992)

The overall mission goal of the United States Patent and Trademark Office (PTO) with respect to the issuance of patents derives from Article 1, Section 8, Clause 8, of the U.S. Constitution which states that Congress shall have the power ''To promote the Progress of Science and useful Arts, by securing for limited Times to * * * Inventors the exclusive Right to their * * * Discoveries''. The PTO's mission goal with respect to the granting of trademark registrations derives from Article 1, Section 8, Clause 3, of the Constitution which states that Congress shall have power ''To regulate Commerce with foreign Nations, and among the several States * * *''.

As an integral part of its mission, PTO is responsible for assuring that patent and trademark information is available to all sectors of society that have a need for, and can make use of, the information. Through dissemination of such information, PTO provides the means to: (1) foster the competent preparation of patent and trademark applications; (2) avoid infringement of patent and trademarks; and (3) understand the current state of the art as a basis for developing new technology.

As an important part of its information dissemination efforts, PTO will strive to have relevant information resources made generally available in the United States in the most useful form and at a reasonable price. This will include not only its own internal information resources but also, to the extent possible, those of other industrial property offices throughout the world.

The private sector has considerable experience in the packaging and distribution of information products and services. The PTO will continue to work through these private sector firms by facilitating their access to PTO's internal information resources and purchasing, where appropriate, finished products and services for the PTO's own internal use.

The PTO will continue to rely on the nationwide network of Patent and Trademark Depository Libraries as a significant means of providing broad public access to its information products and services. PTO will work with these libraries to take advantage of the advances in information technology.

Generally, PTO will provide products and services directly to end-users in those circumstances where: (1) a significant need exists; and either (2) a. access to existing internal PTO information resources permit major economics in the preparation and distribution of specific information products and services through the avoidance of large scale duplication of equipment or processing; or b. PTO is in a unique position, because of its governmental functions, to provide information that is sufficiently timely, accurate, or comprehensive.

In all cases, PTO will offer its information products and services at a price sufficient to recover the marginal costs of its information dissemination activities.

PTO will also work toward standardization and compatibility among various patent and trademark related information products and services available in the marketplace to enhance their overall usefulness to both the intellectual property and research and development communities.

Current PTO Information Dissemination Activities

As part of its mission, the PTO is required to disseminate the information in the patents it grants and in the trademarks it registers. The PTO carries out this mission by making information available in its public search facilities located in Arlington, VA and in PTDLs located throughout the country. The PTO provides a variety of information products and services, including on-line access to data bases, data on magnetic tapes, CD–ROM products, and copies of patents, trademarks and related documents.

PTDLs and local search facilities provide public access to PTO information using paper and microform products, and through on-line access to internal data bases. The Patent Search Room offers access to the Automated Patent System's Text Search (APS-Text) and to Classified Search and Image Retrieval (APS–CSIR). PTDLs, who subscribe to the automated system, provide APS-Text to their patrons. Patrons of the Trademark Search Library have access to the Automated Trademark System's X-Search and to the Trademark Reporting and Monitoring (TRAM) System.

In order to expand the range of products and services offered at PTDLs, the PTO has established a business partnership with libraries located in Sunnyvale, California, and Detroit, Michigan. These partner PTDLs offer the following expanded products and services: (1) on-line access to APS-Text and APS–CSIR, (2) Video Conferencing capability between patent examiners at USPTO and current and potential applicants, (3) electronic ordering of patent documents.

The PTO maintains the PTO BBS and a World Wide Web site on the Internet to provide information about products, services and current activities. Internet access to the PTO BBS is available

through FedWorld (National Technical Information Service). The PTO BBS contains current patent bibliographic data, searchable for the most recent thirteen weeks. The Web site contains the images and searchable text for patents relating to AIDS research.

PTO offers electronic information products on various media, including magnetic tape and Compact Disc-Read Only Memory (CD–ROM). The PTO makes available machine-readable copies (on magnetic tape) of its patent and trademark data bases to customers who pay a fee based on the cost of preparing and distributing the tapes. The customers who purchase the data are primarily large-scale retailers of on-line data base services who in turn provide this data to thousands of customers.

The PTO makes extensive use of CD–ROM technology to disseminate its information. Products are available for use, free of charge, in PTO search facilities and at all PTDLs, and may be purchased by the public. Four patent text products and three trademark text products, sold as annual subscriptions, are updated bimonthly or quarterly. USAPat, sold as an annual subscription and provided as two or three CD–ROMs per week, contains the images of all patents as they issue weekly.

Another important way of disseminating patent and trademark information to customers is through the Patent and Trademark Copy Sales (PTCS) system. Using this system, the PTO can fulfill requests for paper copies of patents and trademarks in a timely fashion.

Beginning in November 1995, PTO will make additional patent information available on the Internet at no charge to the public. This new service will be available via the PTO home page (http://www.uspto.gov/), and will offer approximately twenty years of searchable patent bibliographic text data (1.68 million documents covering 1976 through 1995). All information contained on the front page of a patent, excluding drawings, will be searchable and retrievable.

Conclusion

Using the input gathered from the announced meeting and the written comments, the PTO will analyze the existing information dissemination program in light of the new and existing technologies, the Paperwork Reduction Act of 1995, and OMB Circular A–130. The PTO will then redraft its policy and publish it for comment prior to finalizing it.

Dated: November 2, 1995.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 95–27690 Filed 11–7–95; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Information Collection Available for Public Comment

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

U.S. Military Academy (USMA) programs and curricula undergo periodic review for accreditation by the Accreditation Board of Engineering and Technology (ABET). As input to an upcoming review, perceptions of graduates about the effectiveness of their USMA education are required. The Superintendent delegates responsibility to the Director of Institutional Research for performing special institutional research projects such as program evaluations.

Title: West Point Graduates Survey 1996.

Needs and Uses: The perceptions of graduates on the effectiveness of the U.S. Military Academy programs and curricula are needed for periodic accreditation by the Accreditation Board of Engineering and Technology (ABET). ABET considers graduate feedback essential to the program. The information collected will be used to evaluate programs/curricula and make changes deemed advisable.

Affected Public: Individuals or households.

Annual Burden Hours: 1,059.

Number of Respondents: 1,826.

Responses Per Respondents: 1.

Average Burden Per Response: 35 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the below address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to United States Military Academy, Institutional Research and Analysis Branch, ATTN: MAOR–R, (DR. W. BURKE), BLDG. 2101, West Point, New York 10996. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27613 Filed 11–7–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for the Real Estate Acquisition for, and the Construction of, a U.S. Food and Drug Administration Mega-Laboratory

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support the FDA proposal to acquire ten (10) acres of land on the University of California Irvine Campus, and construct a 7,950 square meter (85,560 square foot) mega-laboratory. The purpose of the proposal is to allow the FDA to consolidate its current regional laboratories into a total of five (5) Mega-Laboratory facilities. The proposed project alternatives would include other sites in Orange County, as well as no action alternative. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan. Scoping: The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to

participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

The public scoping meeting will be held on the UCI Campus in late November, 1995. The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RQ, P.O. Box 2711, Los Angeles CA 90053.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Bulick, U.S. Army Corps of Engineers, Los Angeles District, Project Management Division at (213) 894–0956.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the land acquisition for, and the construction of, an FDA mega-laboratory. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

AVAILABILITY OF THE DRAFT EIS: The Draft EIS is expected to be published and circulated in February 1996, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–27612 Filed 11–7–95; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 8, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Application for Grants Under the Library Literacy Program.
Frequency: Annually.
Affected Public: State, Local or Tribal Government.
Reporting Burden:
Responses: 500.
Burden Hours: 8,500.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state and local public libraries to apply for funds under Title VI of the ''Library Services and Construction Act'' (P.L. 98–480) for planning and coordinating library literacy programs, training librarians and volunteers to carry out such programs, and acquiring necessary materials. Secretary on which applications should be funded.

[FR Doc. 95–27581 Filed 11–7–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia); Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, November 15, 1995: 7:30 pm–9:30 pm (Mountain Standard Time).

ADDRESSES: Indian Pueblo Cultural Center, 2401 12th St. NW., Albuquerque, NM.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda.

7:30 pm Public Comment Period
7:35 pm Meeting Overview
7:40 pm Approval of Agenda
7:45 pm By-laws Committee Report
8:20 pm Budget & Planning Committee Report
8:50 pm Break
8:55 pm Corrective Action Management Unit Report
9:05 pm Approval of 10/18/95 Minutes
9:10 pm Discussion of Minutes
9:20 pm New Business
9:25 pm Public Comment
9:30 pm Adjourn

A final agenda will be available at the meeting Wednesday, November 15, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above.

Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes

The minutes of this meeting 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-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on November 3, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–27691 Filed 11–7–95; 8:45 am]

BILLING CODE 6450–01–P

CTM Tech, Inc.; Notice of Intent to Grant Exclusive Patent License

SUMMARY: Notice is hereby given of an intent to grant to CTM Tech Inc., of Florence South Carolina, an exclusive license to practice the invention described in U.S. Patent Application S.N. 843,027, entitled ''Method and Device for Disinfecting a Toilet Bowl.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. government, and other terms and conditions to be negotiated.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 8, 1996.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585; telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 C.F.R. 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

CTM Tech Inc., of Florence, South Carolina, has applied for an exclusive license to practice the invention embodied in U.S. Patent Application S.N. 843,027, and has a plan for commercialization of the invention. A copy of the specification of the patent application can be obtained from the National Technical Information Service (NTIS), Springfield, Virginia 22152. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a royalty and other terms and conditions to be negotiated. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on November 3, 1995.

Agnes P. Dover,

Deputy General Counsel.

[FR Doc. 95–27692 Filed 11–7–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL96–8–000, et al.]

Alabama Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1995.

Take notice that the following filings have been made with the Commission:

1. Alabama Power Company

[Docket No. EL96–8–000]

Take notice that on October 20, 1995, Alabama Power Company (APCo), tendered for filing a petition for waiver of Commission's fuel adjustment clause regulations to permit the recovery from its full and partial requirements wholesale customers of an appropriate share of the cost of a three-month (150,000 ton) buyout under a long-term

coal supply agreement. APCo states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the buyout costs that it proposes to recover as fuel costs through the fuel cost recovery mechanisms applicable to these customers. The waiver is proposed to be made effective October 20, 1995, which will enable APCo to purchase the lower cost replacement coal as soon as possible.

Comment date: November 22, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Eastex Power Marketing, Inc.

[Docket No. ER96–118–000]

Take notice that on October 18, 1995, Eastex Power Marketing, Inc. (EPMI), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

EPMI intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where EPMI sells electric energy, its proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. EPMI is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Greenwich Energy Partners, L.P.

[Docket No. ER96–116–000]

Take notice that on October 18, 1995, Greenwich Energy Partners, L.P. (Applicant) tendered for filing a petition for waivers and blanket approvals under various Commission regulations and for an order accepting its FERC Electric Rate Schedule No. 1.

Applicant intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Applicant sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Applicant nor any of its affiliates are in the business of generating, transmitting, or distributing electric power. Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER96–124–000]

Take notice that on October 19, 1995, Cinergy Services, Inc. (Cinergy), tendered for filing service agreements under Cinergy's Non-Firm Point-to-Point Transmission Service Tariff (the Tariff) entered into between Cinergy and Heartland Energy Services, Inc.

Cinergy is requesting an effective date of October 16, 1995.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER96–125–000]

Take notice that on October 20, 1995, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, and Central Illinois Public Service Company, tendered for filing with the Commission an Index of Customers and six signed Service Agreements Under the Coordination Sales Tariff approved on April 25, 1995.

Copies of the filing were served on the applicable customers and the Illinois Commerce Commission.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–126–000]

Take notice that on October 20, 1995, PECO Energy Company (PECO), filed a Service Agreement dated October 12, 1995, with New York Power Authority (NYPA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NYPA as a customer under the Tariff.

PECO requests an effective date of October 12, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to NYPA and to the Pennsylvania Public Utility Commission.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Nordic Electric, L.L.C.

[Docket No. ER96–127–000]

Take notice that on October 20, 1995, Nordic Electric, L.L.C. (Nordic Electric), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective upon acceptance by the Commission for filing.

Nordic Electric intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Nordic Electric sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Nordic Electric is not in the business of generating, transmitting, or distributing electric power.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27663 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–493–003, et al.]

Milford Power Associates, et al.; Electric Rate and Corporate Regulation Filings

November 2, 1995.

Take notice that the following filings have been made with the Commission:

1. Milford Power Associates

[Docket No. ER93–493–003]

Take notice that on September 26, 1995, Milford Power Associates filed certain information as required by the Commission's order dated September 17, 1993 in Docket No. ER93–493–000. Copies of Milford Power Associates' informational filing are on file with the Commission and are available for public inspection.

2. Energy Resource Marketing, Inc.

[Docket No. ER94–1580–004]

Take notice that on October 25, 1995, Energy Resource Marketing, Inc. filed certain information as required by the Commission's September 30, 1994,

order in Docket No. ER94–1580–000. Copies of the Energy Resource Marketing, Inc. informational filing are on file with the Commission and are available for public inspection.

3. Associated Power Services, Inc.

[Docket No. ER95–7–004]

Take notice that on September 29, 1995, Associated Power Services, Inc. filed certain information as required by the Commission's December 16, 1994, order in Docket No. ER95–7–000. Copies of Associated Power Services, Inc.'s informational filing are on file with the Commission and are available for public inspection.

4. The Electric Exchange

[Docket No. ER95–111–004]

Take notice that on October 18, 1995, The Electric Exchange filed certain information as required by the Commission's May 3, 1995, order in Docket No. ER95–111–000. Copies of The Electric Exchange's informational filing are on file with the Commission and are available for public inspection.

5. Petroleum Source & Systems Group, Inc.

[Docket No. ER95–266–003]

Take notice that on October 11, 1995, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000. Copies of Petroleum Source & Systems Group's informational filing are on file with the Commission and are available for public inspection.

6. Tennessee Power Company

[Docket No. ER95–581–002]

Take notice that on October 5, 1995, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995, order in Docket No. ER95–581–000. Copies of Tennessee Power Company's informational filing are on file with the Commission and are available for public inspection.

7. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on October 25, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a second amendment to its July 6, 1995, filing in this docket of a rate change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E's initial filing in this docket submitted cost based rates for truing up previous billing made for capacity and energy sales from Energy Account No. 2 during 1993, which were made using rates based on estimated costs. PG&E amended its filing to include a calculation of certain refunds, including interest, resulting from this rate change on August 25, 1995. This second amendment submits a revision of the refund calculation in which adjustments have been made in interest computations.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Otter Tail Power Company

[Docket No. ER95–1687–000]

Take notice that on October 24, 1995, Otter Tail Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER96–113–000]

Take notice that on October 18, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter of Agreement SAO No. 95–SAO–00071 (Letter Agreement) with the Western Area Power Administration (Western). The Letter Agreement conforms the following Contract No. 14–06–200–2948A (Contract 2948A), Contract No. 93–SOA–18003, Settlement Agreement Between Pacific Gas and Electric Company and Western Area Power Administration (PDC Settlement Agreement), and the February 7, 1992 PG&E-Western area Energy Account No. 2 and Capacity Account Repurchase Rate Letter Agreement (February 7 Letter Agreement) in order to allow for a reduction in PG&E's capacity rate to Western.

The Letter Agreement reduces the price PG&E charges Western for capacity from a rate specified by formula to $5.875 per kilowatt per month from June 1, 1996 through December 31, 1999. Prices for capacity from January 1, 2000 through the end of Contract 2948A are determined by indexing the price at December 31, 1999. The Letter Agreement also modifies certain sections of other agreements which effect how charges under Contract 2948A are calculated.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER96–114–000]

Take notice that on October 18, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company (NSP–W) jointly tender and request the Commission to accept a Transmission Service Agreement which provides for Reserved Transmission Service to Wisconsin Power and Light Company beginning September 18, 1995, through November 30, 1996. Specifically the Agreement provides for 40 MW of Reserved Transmission Service from September 18, 1995, through January 31, 1996, 60 MW of Reserved Transmission Service from February 1, 1996, through May 31, 1996, 40 MW of Reserved Transmission Service from June 1, 1996, through August 31, 1996, and 60 MW of Reserved Transmission Service from September 1, 1996, through November 30, 1996. The source party is Basin Electric Power Cooperative and the recipient party is Wisconsin Power and Light Company.

NSP requests that the Commission accept for filing the Transmission Service Agreement effective as of September 18, 1995. NSP requests a waiver of the Commission's notice requirements so the Agreement may be accepted for filing effective on the date requested.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Power, Inc.

[Docket No. ER96–115–000]

Take notice that Entergy Power, Inc. (EPI) on October 18, 1995, tendered for filing a Purchase and Sale Agreement with Sonat Power Marketing Inc.

EPI requests an effective date for the Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the Commission's notice requirements.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER96–137–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on October 23, 1995, tendered for filing as an initial rate schedule, an agreement with National Fuel Resources, Inc. (NFR). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which

NYSEG will sell to NFR and NFR will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on October 24, 1995, so that the parties, if mutually agreeable, enter into separately scheduled transactions under the agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and NFR.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Energy Online, Inc.

[Docket No. ER96–138–000]

Take notice that on October 24, 1995, EnergyOnline, Inc., tendered for filing a petition requesting waivers, blanket approvals, disclaimer of jurisdiction and order accepting rate schedule.

Comment date: November 16, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER96–139–000]

Take notice that on October 23, 1995, Southwestern Public Service Company tendered for filing a Notice of Cancellation of Supplement No. 1 to Supplement No. 6 to Rate Schedule FERC No. 104.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Illinois Power Company

[Docket No. ES96–9–000]

Take notice that on October 30, 1995, Illinois Power Company filed an application under § 204 of the Federal Power Act seeking authorization to issue short-term notes, from time to time, in an aggregate principal amount not to exceed $500 million outstanding at any one time, on or before December 31, 1997, with final maturities no later than December 31, 1998.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95–1716–000]

Take notice that on October 27, 1995, Southern California Edison Company tendered for filing a supplement to its initial filing in the above docket.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27664 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–1572–000]

Boyd Rosene & Associates, Inc.; Notice of Issuance of Order

November 3, 1995.

On August 17, 1995, Boyd Rosene & Associates, Inc. (Boyd Rosene) submitted for filing a rate schedule under which Boyd Rosene will engage in wholesale electric power and energy transactions as a marketer. Boyd Rosene also requested waiver of various Commission regulations. In particular, Boyd Rosene requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Boyd Rosene.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Boyd Rosene should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Boyd Rosene is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Boyd Rosene's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27665 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–23–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 26, 1995, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 25, 1995:

Second Revised Sheet No. 2
Second Revised Sheet No. 657

Columbia states these tariff sheets are being filed to cancel the Index of Entitlements tariff sheets in their entirety, which were previously required pursuant to Section 282.204(b)(2).

Columbia states that as of August 1, 1995, Columbia does not have any firm sales customers to which Section 32.1(f) (Seasonal Curtailment) of Columbia's FERC Gas Tariff would apply. Therefore, there is no longer a need for the indicated tariff sheets.

Columbia states that copies of its filing have been mailed to all holders of Columbia's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27596 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1751–000]

ConAgra Energy Service; Notice of Issuance of Order

November 3, 1995.

On September 14, 1995, ConAgra Energy Services (ConAgra) submitted for filing a rate schedule under which ConAgra will engage in wholesale electric power and energy transactions as a marketer. ConAgra also requested waiver of various Commission regulations. In particular, ConAgra requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ConAgra.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ConAgra should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ConAgra is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ConAgra's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27666 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–30–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

November 2, 1995.

Take notice that on October 19, 1995, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP96–30–000 pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a bi-directional interconnect, authorized in blanket certificates issued in Docket Nos. CP82–435–000 and CP88–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso seeks authorization to construct and operate a bi-directional interconnect with the facilities of PNM Gas Services, a division of Public Service Company of New Mexico (''PNM Gas Services'') in Lea County, New Mexico. The proposed interconnection would permit PNM Gas Services to serve residential, commercial and industrial customers. El Paso has reported that they would construct and operate the proposed interconnect at its own expense which they report to be an estimated cost of $268,200.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27597 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1752–000]

Enpower, Inc.; Notice of Issuance of Order

November 3, 1995.

On September 14, 1995, Enpower, Inc. (Enpower) submitted for filing a rate schedule under which Enpower will engage in wholesale electric power and energy transactions as a marketer. Enpower also requested waiver of various Commission regulations. In particular, Enpower requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Enpower.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Enpower should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Enpower is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued

approval of Enpower's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27667 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–001]

Equitrans, Inc.; Notice of Refund Report

November 2, 1995.

Take notice that on October 30, 1995, Equitrans, Inc. (Equitrans) tendered for filing a Report of Refunds Issued on September 29, 1995.

Pursuant to Article VII, Section 1 of the Stipulation and Agreement filed in these proceedings on January 19, 1995 and the Commission's Orders approving the Stipulation and Agreement, Equitrans made refunds to its customers on September 29, 1995 for all amounts collected in excess of the settlement rates which were subject to refund for the period from September 1, 1993 through June 30, 1995.

Equitrans states that included in the refund amount was interest through September 28, 1995 computed in accordance with Section 154.67(c)(2) of the Commission's regulations. Equitrans states that it refunded to its jurisdictional customers the principal amount of $12,312,054, plus interest thereon to the date of distribution of $1,058,971, for a total of $13,371,025.

Equitrans states that a copy of its report has been served on its customers and interested state commissions.

Any person desiring to protest this application should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27598 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–22–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Iroquois Gas Transmission, System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets:

Second Revised Sheet No. 10
Second Revised Sheet No. 11
Original Sheet No. 11A
Original Sheet No. 11B
Second Revised Sheet No. 27
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 55
Third Revised Sheet No. 57
Third Revised Sheet No. 58
Second Revised Sheet No. 59
First Revised Sheet No. 60
First Revised Sheet No. 96
First Revised Sheet No. 98
First Revised Sheet No. 101
First Revised Sheet No. 102
First Revised Sheet No. 114
First Revised Sheet No. 117
First Revised Sheet No. 141
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
First Revised Sheet No. 149
First Revised Sheet No. 151
First Revised Sheet No. 152
First Revised Sheet No. 153
Original Sheet No. 158A
First Revised Sheet No. 162
First Revised Sheet No. 164
First Revised Sheet No. 170
Second Revised Sheet No. 181
Second Revised Sheet No. 183

The proposed effective date of the above tariff sheets is December 1, 1995.

Iroquois states that proposed changes are intended: (1) To implement a best bid process for allocating existing capacity on the Iroquois system when it becomes available (other than through capacity release or right of first refusal), (2) to revise the allocation procedure so that interruptible service will be allocated on the basis of the price paid, (3) to clarify the time nominations are due and explain that nominations can occur through pipeline segments, and (4) to make a number of minor ministerial changes to, for example, eliminate redundant language and indicate the person to whom requests should be made.

Iroquois states that copies of this filing were served upon all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27599 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–30–006]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 30, 1995, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing to become part of its FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1995

1st Rev Second Revised Sheet No. 3904

Effective November 1, 1995

Substitute Third Revised Sheet No. 3904
Substitute Second Revised Sheet No. 3905

Koch Gateway states that the above referenced tariff sheets reflect revisions to its tariff in compliance with the September 29, 1995, Federal Energy Regulatory Commission (''Commission'') Order. Pursuant to the Commission's order, Koch Gateway revised the above referenced tariff sheets to (1) provide for a recovery period of two years from the effective date of each Account No. 858 surcharge, (2) annually adjust its Account No. 858 surcharges, and (3) refund any overrecovery of Account No. 858 costs. Accordingly, Koch Gateway has revised the above referenced tariff sheets to reflect the necessary changes.

Additionally, Koch Gateway states that, as a result of overlapping

proceedings, it is filing Substitute Third Revised Sheet No. 3904 and 3905 to reflect the tariff revisions that will be effective November 1, 1995.

Koch Gateway also states that the tariff sheets are being mailed to all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's regulations. All such protests should be filed on or before November 9, 1995. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27600 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–23–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 22, to be effective December 1, 1995.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the fifth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in the filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit the tariff sheet to become effective December 1, 1995.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27601 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–25–000]

North Penn Gas Company; Notice of Filing

November 2, 1995.

Take notice that on October 30, 1995, North Penn Gas Company (North Penn) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 3A.

According to North Penn, the purpose of the filing is to fulfill the obligation, set forth in section 17.4 of the General Terms and Conditions of North Penn's tariff, to refund past overrecoveries of Take-or-Pay (TOP) costs to North Penn's FERC-jurisdictional customers, Transcontinental Gas Pipe Line Corporation and New York State Electric and Gas Corporation. By order dated June 29, 1995 in *North Penn Gas Co.*, Docket No. RP95–304, the Commission required North Penn to submit a tariff filing by October 31, 1995 to distribute such refunds as of December 29, 1995. North Penn states that the instant filing is also in satisfaction of that order.

North Penn requests waiver of any of the Commission's Rules and Regulations that may be required so that the tendered tariff sheet can be made effective as North Penn requests.

North Penn states that copies of the letter of transmittal and all enclosures are being mailed to each of North Penn's affected customers and State Commissions shown on the service list attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 214). All such motions or protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27604 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–24–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

November 2, 1995.

Take notice that on October 30, 1995, Northern Border Pipeline Company (Northern Border) petitioned the Commission for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to extend the time period to May 31, 1996 in which firm shippers have to discharge the Tender Deficiencies accumulated during a planned pipeline outage on Foothills Pipe Lines Ltd.'s system.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426 a motion to intervene or protest in accordance with Sections 385.211 and 385.214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 9, 1995. Protests will be considered by it 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 in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27602 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–220–009]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

November 2, 1995.

Take notice that on October 31, 1995, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of November 1, 1995:

Third Revised Volume No. 1

Second Revised Sixth Revised Sheet No. 5
First Revised Fifth Revised Sheet No. 5–A
Second Revised Fifth Revised Sheet No. 8

Original Volume No. 2

Second Revised Twentieth Revised Sheet No. 2
First Revised Fifteenth Revised Sheet No. 2.1
First Revised Nineteenth Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to place into effect a $1,000,000 rate reduction pending final resolution of the general rate proceeding in this docket. The rate reduction is being made in conjunction with the filing of a Joint Offer of Settlement (''Settlement'') that is proposed to resolve, or put in place procedures to resolve, all issues in this docket. Northwest anticipates filing the Settlement with the Presiding Administrative Law Judge on or around November 6, 1995. As a part of the Settlement, Northwest is classifying $3,000,000 annually to the commodity charge component of its transportation rates for the period of November 1, 1995 through January 31, 1996. The effect of the cost classification is to increase the commodity charges and decrease the reservation charges for Northwest's transportation rates. The instant filing reflects the changes that result from the classification change and reduces the overall cost of service underlying Northwest's transportation rates as set forth above. Other rate changes contemplated by the Settlement will not be put into place until a final order approving the Settlement has been issued.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP94–220.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27603 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–28–000]

Pacific Gas Transmission Company; Notice of Refund Report

November 2, 1995.

Take notice that on October 31, 1995, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance a refund report documenting refunds paid July 20 and October 17, 1995 pursuant to Commission Orders issued February 22 and May 3, 1995 in Gas Research Institute (''GRI'') Docket Nos. RP95–124–000, *et al.*

PGT states the refund report documents its payment to customers of $388,254.83 and $838,491.00 on July 20 and October 17, 1995, respectively. These payments represent refunds of 1994 overcollections of GRI surcharges as discussed in the above orders.

PGT further states that a copy of the refund report has been served on each of its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27605 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1747–000]

Superior Electric Power Corporation; Notice of Issuance of Order

November 3, 1995.

On September 13, 1995, Superior Electric Power Corporation (Superior) submitted for filing a rate schedule under which Superior will engage in wholesale electric power and energy transactions as a marketer. Superior also requested waiver of various Commission regulations. In particular, Superior requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Superior.

On October 23, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Superior should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Superior is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Superior's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline of filing motions to intervene or protests, as set forth above, is November 22, 1995.

Copies of the full text of the order are available from the Commission's Public

Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27668 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–119–003]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 2, 1995.

Take notice that on October 26, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1995:

Twelfth Revised Sheet No. 10
Ninth Revised Sheet No. 11
Fourth Revised Sheet No. 11A
Fourteenth Revised Sheet No. 12
First Revised Sheet No. 227
First Revised Sheet No. 228
Sixth Revised Sheet No. 229
Third Revised Sheet No. 230
Third Revised Sheet No. 231
Third Revised Sheet No. 231A
Original Sheet No. 231A01

Texas Gas states that the revised tariff sheets are being filed to comply with Article V of Texas Gas's Stipulation and Agreement of Settlement (Settlement) filed on July 12, 1995, which requires the sheets be filed within fifteen (15) days of the effective date of the Settlement. The Settlement which is intended to resolve all issues related to Texas Gas's recovery of gas supply realignment (GSR) costs was approved by Commission Order on September 18, 1995, without modification or condition.

Texas Gas states that the revised tariff sheets are identical to the pro forma sheets contained in Appendix C of Texas Gas's Settlement and revise Section 33.3 ''Gas Supply Realignment Costs'' of the General Terms and Conditions of the tariff consistent with the Settlement. Texas Gas seeks an effective date of November 1, 1995, as provided for by the Settlement.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers, interested state commissions, and those who are parties on the official service lists of the referenced dockets listed above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 9, 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.

Lois D. Cashell,

Secretary.

FR Doc. 95–27606 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–121–001]

WestGas InterState, Inc.; Notice of Compliance Filing

November 2, 1995.

Take notice that on October 26, 1995, WestGas InterState, Inc. (WGI) tendered for filing revised tariff sheets to its FERC Gas Tariff as identified on the Appendix A attached to its filing.

WGI states that it is filing these tariff sheets in compliance with the Letter Order issued October 6, 1995 in Docket No. TM96–1–121–000, by Kevin P. Madden, Director, Office of Pipeline Regulation. In the October 6, 1995, Letter Order, the Director directed WGI to file revised tariff sheets deleting the Annual Charge Adjustment surcharge reflected in its tariff prior to October 1, 1994 and maintaining the ACA surcharge in effect as of October 1, 1994. WGI states that the revised tariff sheets: (1) reflect the deletion of the ACA surcharge under WGI's FERC Gas Tariff prior to October 1, 1994; (2) places the applicable ACA surcharge of $0.0024 per dth into effect on October 1, 1994; and (3) corrects the pagination of the tariff sheet originally filed in this proceeding which changes due to the filing of the aforementioned tariff sheets.

WGI states that a copy of its filing was served on each of its jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406, 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 November 9, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27607 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–136–000]

Williams Natural Gas Company; Notice of Informal Settlement Conference

November 2, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, November 15, 1995, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27608 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1614–000]

Vantus Energy Corporation; Notice of Issuance of Order

November 3, 1995.

On August 23, 1995, Vantus Energy Corporation (Vantus) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Vantus requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Vantus. On October 20, 1995, the Commission issued an Order Accepting In Part Market-Based Rates For Filing, And Granting Waivers And Authorizations (Order), in the above-docketed proceeding.

The Commission's October 20, 1995 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket

approval of issuances of securities or assumptions of liabilities by Vantus should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Vantus is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Vantus' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 20, 1995.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27669 Filed 11–7–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5327–6]

Comprehensive Environmental Response, Compensation, and Liability Act; Superfund Docket & Documents Center: Relocation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of move and of closing of Superfund Docket during the move.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act Docket will move from the 12th floor to the 1st floor of the Crystal Gateway 1 building, 1235 Jefferson Davis Highway, Arlington, VA, 22202. The Superfund Docket will be closed from November 17, 1995, through November 21, 1995. Closing the Docket during this move will facilitate the moving of the Docket's collection and ensure the integrity of the regulatory dockets. This move will allow the Docket to provide improved services to its patrons.

As of October 24, 1995, we identified that the following actions will be undergoing the public comment period during the time of the Docket's closing:

NPL–U19 National Oil and Hazardous Substance Pollution Contingency Plan; The National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule—12/1/95

102RQ–RN–2 Reportable Quantity Adjustments; Administrative Reporting Exemptions for Certain Radionuclide Releases; Supplementary Proposed Rule—12/4/95

The Docket staff will receive written comments during this time; however, the dockets will not be available for viewing.

FOR FURTHER INFORMATION CONTACT: Superfund Docket & Documents Center (5201G), 401 M Street, S.W., Washington, D.C. 20460 ((703) 603–8917). Beginning November 20, 1995, the phone number will be (703) 603–9232.

Dated: October 27, 1995.

Elaine Davies,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 95–27695 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66218; FRL 4984–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 6, 1996, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 21 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00590	Bicep 4.51	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00638	Dual 25G Granular Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00716	Cycle Herbicide	Cyanazine 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–00748	Bicep DF Herbicide	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
000100–NC–90–0005	Subdue 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000239–02531	Grass-B-Gon Grass Killer	Butyl 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate
000334–00187	Fyte 7 Bacteriostat	Paraformaldehyde Paradichlorobenzene Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14},40%C_{12}, 10%C_{16})
000352–00447	Dupont Benlate 50 DF Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
001769–00344	Fen-Two	(1-Cyclohexene-1,2-dicarboximido)methyl2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
002393–00460	Mylone 99G Soil Fumigant NC	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
008120–00052	Amercoat 70 ESP Copper-Ablative Antifoulant	Copper (metallic)
008329–UT–93–0005		Gas cartidge (as a device for burrowing animal control)
010182–00114	ICI Spot Weed & Grass Control	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182–OR–92–0017	Karate Insecticide	(*RS*)-alpha-Cyano-3-phenoxybenzyl (1*RS*)-cis-3-(*Z*)-2-chloro-3,3,3-
010370–00239	Ford's Yard-X	4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
010900–00088	851 Wasp and Hornet Killer	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
034704–00442	Clean Crop Crabgrass Preventer Plus Turf Food Containing	3,5-Dinitro-*N*4,*N*4-dipropylsulfanilamide
034704–00568	Hopkins Mylone 50D Easy To Use Soil Fumigant	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
034704–00569	Hopkins Mylone 85W	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
045087–00045	Zema Home and Carpet Spray	*N*-Octyl bicycloheptene dicarboximide Pyrethrins 4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
050932–00001	Sabadilla Pest Control	Veratrine (mixture, Cevadine + Veratridine, with other alkaloids)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	The Solaris Group of Monsanto Co., Box 5006, San Ramon, CA 94583.
000334	Hysan Corp., 3000 W. 139th St., Blue Island, IL 60406.
000352	E. I. DuPont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
008120	Ameron Protective Coastings Division, 201 North Berry St., Brea, CA 92621.
008329	Clarke Mosquito Control Products Inc., 159 N. Garden Ave, Roselle, IL 60172.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010370	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
010900	Specialty Division, Div of The Sherwin-Williams Co., Agent For: Spray on Products Inc., 31500 Solon Rd., Solon, OH 44139.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
045087	Zema Corp., Box 12803, Research Triangle Park, NC 27709.
050932	Necessary Organics Inc., One Nature's Way, New Castle, VA 24127.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, 1 pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

Cas No.	Chemical Name	EPA Company No.
69806–50–4	Fluazifop-butyl	000239

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 6, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 25, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–27433 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5328–2]

Proposed Settlement Pursuant to 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: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative settlement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Aluminum Company of America Superfund Site (''Site''). The Site is located in the Town of Massena, St. Lawrence County, New York. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (''Order'') between EPA and the Aluminum Company of America (''ALCOA''). This Order will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper or inadequate, and EPA, in accordance with Section 122(i)(3) of CERCLA, modifies or withdraws its consent to the proposed settlement. Under the Order, ALCOA will be obligated to pay an aggregate of $300,957.49 to the Hazardous Substance Superfund in reimbursement of all of EPA's response costs relating to the Site through November 30, 1993, including accrued interest.

DATES: Comments must be provided on or before December 8, 1995.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866 and should refer to: ''Aluminum Company of America Superfund Site, U.S. EPA Index No. II CERCLA–95–0210''. For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Douglas L. Fischer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3180.

Dated: September 27, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–27696 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5328–3]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Denune/Westfall Site

AGENCY: U.S. Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Denune/Westfall Site.

SUMMARY: U.S. EPA proposes to address the potential liability of Mr. Harry C. Denune and Dixie Distributing Company (the ''Settling Parties'') under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Pub. L. 99–499, for past costs incurred in connection with a federal fund lead removal action conducted at the Denune/Westfall Site (''the Site'') located in Columbus, Ohio. The U.S. EPA proposes to address the potential liability of the Settling Parties by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement (''AOC'') prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) the Settling Parties agree to pay U.S. EPA $70,000.00 in satisfaction of claims for past costs incurred at the Site in connection with site sampling and analyses and the removal and disposal of 13 drums of PCB-contaminated oil, 1 drum of PCB-contaminated capacitors and 4 transformer carcasses; (2) the Settling Parties agree to waive all claims against the United States that arise out of response activities conducted at the Site; and (3) U.S. EPA affords the Settling Parties a convenant not to sue for past costs incurred during the removal action and contribution protection as provided by CERCLA Sections 113(f)(2) and 122(h)(4) upon satisfactory completion of obligations under the Settlement. However, U.S. EPA is free to pursue any other necessary and appropriate judicial and administrative relief against the Settling Parties. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time. Because the total response costs that were incurred at the Site are less than $500,000, approval of the settlement by the Attorney General is not required.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before December 8, 1995.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mike Anastasio at (312) 886–7951, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Mike Anastasio, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mike Anastasio at (312) 886–7951, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Barry C. DeGraff,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 95–27694 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 1, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 8, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0433.

Title: Basic Signal Leakage Performance Report Section 76.615.

Form No.: FCC 320.

Type of Review: Extension of an existing collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 32,000.

Estimated Time Per Response: 20 hours.

Total Annual Burden: 640,000.

Needs and Uses: Cable television system operators who use frequencies in the bands 108–137 and 225–400 MHz (aeronautical frequencies) are required to file a cumulative signal leakage index (CLI) derived under Section 76.611(a)(1) or the results of airsace measurements derived uncer Section 76.611(a)(2). This filing must include a description of the method by which complaince with basic signal leakage criteria is achieved and the method of calibrathing the measurement equipment. The yearly filing is done in accordance with

Section 76.615. The FCC staff used the data to ensure the safe operation of aeronautical and marine radio services, and to monitor compliance of cable aeronautical usage which will minimize future interference of these safety of life services.

OMB Approval No.: New Collection.

Title: Section 63.16 Construction of Stand-Alone Cable System by a Carrier in its Exchange Telephone Service Area (CC Docket No. 87–266).

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 50 hours.

Needs and Uses: The Commission finds that the public interest would be served by providing for reduced or ''streamlined'' Section 214 Authorization to local exchange telephone companies (LECs) agains whom it is not enforcing the cable television/telephone company cross-ownership ban, who propose to construct a cable system in their service area if the LEC is willing to certify to three facts pursuant to 47 CFR 63.16. The information provided by applicants for streamlined treatment will first be placed on public notice for public comment. If comments are filed challenging the veracity of the applicants certification the Commission will attempt to assess the veracity of the application.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27649 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 1, 1995.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 8, 1995. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0475.

Title: Section 90.713 Entry Criteria.

Form No.: N/A.

Type of Review: Reinstatement, without change of a previously approved collection.

Respondents: Individuals or households; Businesses or other for-profit.

Number of Respondents: 33.

stimated Time Per Response: 25.5.

Total Annual Burden: 842.

Needs and Uses: Section 90.713 requires applications for nationwide systems in the 220–222 MHz band to certify that they have an actual presence neccessitating internal communications capacity in the 70 or more markets identified in the application. The data will be used to determine the eligibility of the applicant to hold a radio station authorization. Commission licensing personnelwill use the data for ruling making proceedings and field engineers will use the data for enforcement purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–27650 Filed 11–7–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Arkansas National Bancshares, 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 December 1, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arkansas National Bancshares, Inc., Bentonville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Arkansas National Bank, Bentonville, Arkansas.

2. Campbellsville Bancorp, Inc., Campbellsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Campbellsville National Bank, Campbellsville, Kentucky.

3. First National Security Company, DeQueen, Arkansas; to acquire 100 percent of the voting shares of American State Bancshares, Inc., Broken Bow, Oklahoma, and thereby indirectly acquire 90.6 percent of the voting shares of American State Bank, Broken Bow, Oklahoma.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American National Corporation, Omaha, Nebraska; to acquire 100

percent of the voting shares of Fairbury State Bank, Fairbury, Nebraska.

2. Grandview Bankshares, Inc., Tahlequah, Oklahoma; to acquire 100 percent of the voting shares of Cherokee County Banshares, Inc., Hulbert, Oklahoma, and thereby indirectly acquire First State Bank, Hulbert, Oklahoma.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27629 Filed 11–07–95; 8:45 am]

BILLING CODE 6210–01–F

Peter Mahurin; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Peter Mahurin, Cecilia, Kentucky; to acquire 26.92 percent of the voting shares of First Cecilian Bancorp, Inc., Cecilia, Kentucky, and thereby indirectly acquire Cecilian Bank, Cecilia, Kentucky.

Board of Governors of the Federal Reserve System, November 2, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–27630 Filed 11–07–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 951 0086]

The Stop & Shop Companies, Inc., and SSC Associates, L.P.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: This consent agreement, accepted subject to final Commission approval, settles alleged violations of federal law prohibiting unfair or deceptive acts and practices and unfair methods of competition arising from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. Under the terms of the proposed order contained in the consent agreement, Stop & Shop and SSC Associates, among other things, must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acqurier who shall own and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquriers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. For a period of ten years, the proposed order also would prohibit Stop & Shop and SSC Associates from acquiring, without prior notice to the Commission, supermarket assets located in—or any interest (such as stock) in any entity that owns or operates a supermarket located in—Eastern Massachusetts, which includes the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision would not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor would it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months. Under the terms of an attached Asset Maintenance Agreement—from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested, until the point at which the divestitures required by the proposed order have been completed—Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability; must not cause their wasting or deterioration; and cannot sell, transfer, or otherwise impair their marketability or viability.

DATES: Comments must be received on or before January 8, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S–2602, Washington, DC 20580 (202) 326–2610; or James A. Fishkin, FTC/S–2610, Washington, DC 20580 (202) 326–2663.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission'') having initiated an investigation of the proposed acquisition of Purity Supreme, Inc. (''Purity'') by The Stop & Shop Companies, Inc. (''Stop & Shop'') and SSC Associates, L.P., and it now appearing that Stop & Shop and SSC Associates, L.P., hereinafter sometimes referred to as ''proposed respondents,'' are willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondents, their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Stop & Shop Companies, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02169.

2. Proposed respondent SSC Associates, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the

State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed complaint and Order contemplated hereby. Proposed respondents understand that once the Order has been issued, they will be required to file verified written reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Stop & Shop'' means The Stop & Shop Companies, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by The Stop & Shop Companies, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. ''Respondent'' or ''SSC Associates, L.P.'' means SSC Associates, L.P., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by SSC Associates, L.P., their successors and assigns, and their directors, officers, employees, agents, and representatives.

C. ''Assets to be divested'' means the supermarket assets described in Paragraph II.A. of this Order.

D. ''Commission'' means the Federal Trade Commission.

E. ''Supermarket'' means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.

F. The term ''Eastern Massachusetts'' means the area in Massachusetts consisting of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein.

II

It is further ordered that:

A. Respondents shall divest, absolutely and in good faith, within nine (9) months from the date this Order becomes final:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod) to one acquirer who shall own and operate them:

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

If respondents are unable to divest all of the supermarkets listed to one acquirer who shall own and operate them, respondents may divest all of the supermarkets listed to no more than two acquirers who shall own and operate them.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

The assets to be divested shall include the supermarket business operated, and all assets, leases, properties, business and goodwill, tangible and intangible, utilized in the supermarket operations at the locations listed above, but shall not include those assets consisting of or pertaining to Stop & Shop or Purity trade names, trade dress, trade marks, service marks, and such other intangible assets that respondents also utilize in their business at locations other than those listed above.

B. Respondents shall divest the assets to be divested only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets to be divested as ongoing viable enterprises engaged in the supermarket business and to remedy the lessening of competition resulting from the acquisition alleged in the Commission's complaint.

C. Pending divestiture of the assets to be divested, respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the assets to be divested to comply with Paragraphs II. and III. of this Order and to prevent the destruction, removal, wasting, deterioration, or impairment of the assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

D. Respondents shall comply with all the terms of the Asset Maintenance Agreement attached to this Order and made a part hereof as Appendix I. The Asset Maintenance Agreement shall continue in effect until such time as all assets to be divested have been divested as required by this Order.

III

It is further ordered that:

A. If respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the assets to be divested within nine (9) months from the date this Order becomes final, the Commission may appoint a trustee to divest any of the assets to be divested. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after written notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the assets to be delivered.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.B.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this 12-month period only one (1) time for one (1) year.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets to be divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II. of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at

least in significant part on a commission arrangement contingent on the trustee's divesting the assets to be divested to satisfy Paragraph II. of this Order.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.

12. The trustee shall report in writing to respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any ownership or leasehold interest in any facility that has operated as a supermarket within six (6) months of the date of such proposed acquisition in Eastern Massachusetts.

B. Acquire any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any supermarket or owned any interest in or operated any supermarket within six (6) months of such proposed acquisition in Eastern Massachusetts.

Provided, however, that advance written notification shall not apply to the construction of new facilities by respondents or the acquisition of or leasing of a facility that has not operated as a supermarket within six (6) months of respondents' offer to purchase or lease.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as ''the Notification''), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the ''first waiting period''). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V

It is further ordered that, for a period of ten (10) years commencing on the date this Order becomes final:

A. Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)) that requires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if such supermarket was formerly owned or operated by Purity in Eastern Massachusetts, or was owned or operated by respondents either in Barnstable County, Massachusetts (a/k/a Cape Cod) or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. *Provided, however,* respondents shall not be prevented from entering into or enforcing any agreement (1) requiring their approval of any sublease, assignment, or change in occupancy, which approval shall not be unreasonably withheld; provided further that use of a site for the operation of a supermarket shall not be a basis for withholding such approval; or (2) affecting any existing supermarket owned or operated by respondents and located not more than one mile from a replacement supermarket owned or operated by respondents and opened within six months of the date of such agreement.

B. Respondents shall not remove any equipment from a supermarket owned or operated by respondents in Eastern Massachusetts prior to a sale, sublease, assignment, or change in occupancy, except for replacement or relocation of such equipment in or to any other supermarket owned or operated by respondents in the ordinary course of business, or as part of any negotiation for a sale, sublease, assignment, or change in occupancy of such supermarket.

VI

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of Paragraphs II. or III. of this Order, respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of the Order, including a description of all substantive contracts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date of this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VII

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in respondents such as dissolution, assignment, sale resulting in the emergency of a successor

corporation, or the creation or dissolution of subsidiaries or any other change in respondents that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, for the purpose of determining or securing compliance with this Order, respondents shall permit any duly authorized representative of the Commission:

A. Upon five days' written notice to respondents, access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondents relating to any matters contained in this Order; and

B. Upon five days' written notice to respondents and without restraint or interference from respondents, to interview respondents or officers, directors, or employees of respondents in the presence of counsel.

Asset Maintenance Agreement

This Asset Maintenance Agreement (''Agreement'') is by and between The Stop & Shop Companies, Inc. (''Stop & Shop''), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1385 Hancock Street, Quincy, MA 02169 11420; SSC Associates, L.P. (''SSC Associates''), a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at c/o Kohlberg, Kravis, Roberts & Co., 9 West 57th Street, New York, New York 10019; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively ''the Parties'').

Premises

Whereas, Stop & Shop and SSC Associates, pursuant to an agreement dated April 21, 1995, agreed to acquire all of Purity Supreme, Inc. (hereinafter ''Acquisition''); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an agreement is not reached preserving the *status quo ante* of the assets to be divested as described in II.A. of the attached Agreement Containing Consent Order (''Assets'') during the period prior to their divestitures, when those Assets will be in the hands of Stop & Shop and SSC Associates, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

Whereas, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Assets; and

Whereas, the purpose of this Agreement and of the Consent Order is to preserve the Assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

Whereas, Stop & Shop and SSC Associates entering into this Agreement shall in no way be construed as an admission by Stop & Shop and SSC Associates that the Acquisition is illegal; and

Whereas, Stop & Shop and SSC Associates understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

Now, therefore, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Assets, the Parties agree as follows:

Terms of Agreement

1. Stop & Shop and SSC Associates agree to execute, and upon its issuance to be bound by, the attached Consent Order. The Parties further agree that each term defined in the attached Consent Order shall have the same meaning in this Agreement.

2. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Stop & Shop and SSC Associates will be free to close the Acquisition after 3:00 p.m., October 31, 1995.

3. Stop & Shop and SSC Associates agree that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a-3.b, they will comply with the provisions of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. on the day the divestiture set out in the Consent Order has been completed.

4. From the time Stop & Shop and SSC Associates acquire the Assets until the divestiture set out in the Consent Order has been completed, Stop & Shop and SSC Associates shall maintain the viability, competitiveness and marketability of the Assets, and shall not cause the wasting or deterioration of the Assets, nor shall they sell, transfer, encumber or otherwise impair their marketability or viability.

5. Should the Commission seek in any proceeding to compel Stop & Shop and SSC Associates to divest themselves of the Assets or to seek any other injunctive or equitable relief, Stop & Shop and SSC Associates shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Stop & Shop and SSC Associates also waive all rights to contest the validity of this Agreement.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Stop & Shop and SSC Associates and to their principal offices, Stop & Shop and SSC Associates shall permit any duly authorized representative or representatives of the Commission:

a. access during the office hours of Stop & Shop and SSC Associates, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Stop

& Shop and SSC Associates relating to compliance with this Agreement; and

b. upon five (5) days' notice to Stop & Shop and SSC Associates and without restraint or interference from them, to interview officers or employees of Stop & Shop and SSC Associates, who may have counsel present, regarding any such matters.

7. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted for public comment from The Stop & Shop Companies, Inc. (''Stop & Shop'') and SSC Associates, L.P. (''SSC Associates'') an agreement containing a proposed consent order. The agreement is designed to remedy anticompetitive effects stemming from Stop & Shop and SSC Associates' acquisition of the supermarkets owned by Purity Supreme, Inc. (''Purity'').

The agreement has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's draft complaint charges that on or about April 21, 1995, Stop & Shop and SSC Associates agreed to acquire all of the supermarkets owned by Purity. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

According to the draft complaint, Stop & Shop and Purity are direct competitors for the retail sale of food and grocery items in supermarkets, or narrower product markets contained therein. Stores other than supermarkets do not have a significant price-constraining effect on food and grocery products sold at supermarkets. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets. In addition, supermarkets do not regularly price-check food and grocery products sold at other types of stores and do not typically change their food and grocery prices in response to prices at other types of stores.

Food stores other than supermarkets, such as convenience stores, ''mom & pop'' stores, and specialty food stores (*e.g.*, seafood markets, bakeries, etc.), typically offer far fewer items than the average supermarket and charge higher prices for many of the same or similar items. Other types of stores that sell some food and grocery products, such as large drug stores and mass merchandisers, offer only a limited number of items sold in the typical supermarket. The small number of upscale food stores emphasizing organically grown fruits and vegetables, hormone-free meat and poultry products, and other more expensive food products, and club stores that offer only a limited number of food and grocery products in bulk sizes, do not have a significant effect on market concentration.

According to the draft complaint, the relevant sections of the country in which to analyze the acquisition of Purity are the following:

a. Barnstable County, Massachusetts (a/k/a Cape Cod), and narrower markets contained therein, including Falmouth, Mashpee, Hyannis, Yarmouth, Harwich, and Orleans;

b. the South Shore area of Massachusetts, which consists of parts of Suffolk and Plymouth counties and narrower markets contained therein, including Marshfield and Kingston;

c. the Boston, Massachusetts metropolitan area, which consists of the city of Boston and parts of Essex, Middlesex, Norfolk, and Suffolk counties, and narrower markets contained therein, including Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth;

d. Brockton, Massachusetts; and

e. Bedford, Massachusetts.

According to the draft complaint, these markets are highly concentrated. The post-acquisition Herfindahl-Hirschman Index (''HHI''), a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants, in Barnstable County, Massachusetts (a/k/a Cape Cod) would increase by approximately 2,778 points, from approximately 3,541 to approximately 6,319. The post-acquisition HHI in Falmouth, Mashpee, and Hyannis would increase to 10,000 or near 10,000 in each of these markets. The post-acquisition HHI in Yarmouth, Harwich, and Orleans would significantly increase already highly concentrated markets.

The post-acquisition HHI in the South Shore area of Massachusetts would increase by approximately 3,866 points, from approximately 3,930 to approximately 7,795. The post-acquisition HHI in Marshfield and Kingston would increase to 10,000 or near 10,000 in each of these markets.

The post-acquisition HHI in the Boston, Massachusetts metropolitan area would increase by approximately 512 points, from approximately 1,381 to approximately 1,893. The post-acquisition HHI exceeds 2,000 when club stores and upscale food stores are not included in the market. The post-acquisition HHI in Saugus, Medford, Watertown, Brookline, the Roslindale neighborhood in Boston, and Weymouth would significantly increase already highly-concentrated markets.

The post-acquisition HHI in Bedford, Massachusetts would increase by approximately 4,702 points, from approximately 5,298 to approximately 10,000.

The post-acquisition HHI in Brockton, Massachusetts would increase by approximately 497 points, from approximately 5,162 to approximately 5,659.

According to the draft complaint, entry into the retail sale of food and grocery products in supermarkets in the relevant sections of the country is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant sections of the country. Entry that would prevent the anticompetitive effects in the relevant sections of the country is generally difficult because there are few available sites suitable for supermarkets and the time necessary to receive state and local regulatory approval for a new supermarket is typically quite long.

Stop & Shop and SSC Associates' acquisition of Purity may reduce competition in these markets by eliminating the direct competition between Stop & Shop and Purity, by increasing the likelihood that Stop & Shop will become a dominant firm, and by increasing the likelihood of collusive behavior among the remaining competitors. The Agreement Containing Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the proposed order Stop & Shop and SSC Associates must divest 17 supermarkets within nine months to a purchaser or purchasers approved by the Commission. Seven of the 17 supermarkets to be divested are located on Cape Cod, and all seven must be divested to one acquirer who shall own and operate them as supermarkets. If Stop & Shop and SSC Associates are unable to divest all seven stores on Cape Cod to a single acquirer who shall own

and operate them as supermarkets, Stop & Shop and SSC Associates may divest the stores to no more than two acquirers. If Stop & Shop and SSC Associates fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest supermarkets to satisfy the terms of the order. The 17 supermarkets to be divested are:

1. The following supermarkets located in Barnstable County, Massachusetts (a/k/a Cape Cod):

a. Purity store no. 67 located at 137 Main St. (Route 28—Falmouth Mall), Falmouth, MA 02540;

b. Purity store no. 79 located at Mashpee Circle (Routes 28 and 151—Mashpee Commons Shopping Center), Mashpee, MA 02649;

c. Purity store no. 63 located at 625 West Main St., Hyannis, MA 02601;

d. Purity store no. 72 located at 1070 Iyanough Road (Route 132), Hyannis, MA 02601;

e. Purity Store no. 66 located at 1080 State Road (Route 28 and Forest Street), Yarmouth, MA 02664;

f. Purity store no. 65 located at 18 Sisson Road, Harwich, MA 02671; and

g. Purity store no. 86 located at Cranberry Highway (Route 6A) and West Road, Orleans, MA 02653.

2. The following supermarkets located in Plymouth County, Massachusetts:

a. Purity store no. 89 located at 182 Summer St. (Routes 3A and 53—Kingsbury Square Shopping Center), Kingston, MA 02364;

b. Purity store no. 74 located at Ocean and Webster Sts. (Routes 139 and 3A—Webster Square), Marshfield, MA 02050; and

c. Purity store no. 25 located at 240 East Ashland St. (Cary Hill Shopping Center), Brockton, MA 02402.

3. The following supermarket located in Suffolk County and in the city of Boston, Massachusetts:

a. Purity store no. 41 located at 630 American Legion Highway, Roslindale, MA 02131.

4. The following supermarkets located in Middlesex County, Massachusetts:

a. Purity store no. 03 located at 170 Great Road (Routes 4 and 225), Bedford, MA 01730;

b. Purity store no. 44 located at 2151 Mystic Valley Parkway, Medford, MA 02155; and

c. Stop & Shop store no. 436 located at 550 Arsenal Street (Watertown Mall), Watertown, MA 02172.

5. The following supermarket located in Essex County, Massachusetts:

a. Purity store no. 01 located at 400 Lynn Fells Parkway, Saugus, MA 01960.

6. The following supermarkets located in Norfolk County, Massachusetts:

a. Purity store no. 20 located at 525 Harvard St., Brookline, MA 02146; and

b. Purity store no. 24 located at 10 Pleasant Valley Street, South Weymouth, MA 02190.

For a period of ten years from the date the order becomes final, the order also prohibits Stop & Shop and SSC Associates from acquiring, without prior notice to the Commission, supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in Eastern Massachusetts. Eastern Massachusetts consists of the counties of Barnstable, Bristol, Essex, Middlesex, Norfolk, Plymouth, and Suffolk, and all cities and towns therein. This provision does not prevent Stop & Shop and SSC Associates from constructing new supermarket facilities on their own; nor does it prevent Stop & Shop and SSC Associates from leasing facilities not operated as supermarkets within the previous six months.

For a period of ten years, the order prohibits Stop & Shop and SSC Associates from entering into or enforcing any agreement that restricts the ability of any person acquiring any location used as a supermarket, or interest in any location used as a supermarket on or after July 1, 1995, to operate a supermarket at that site if that site was a former Purity store in Eastern Massachusetts, and any supermarket owned or operated by any Stop & Shop and SSC Associates either in Cape Cod or not more than two miles from any other supermarket formerly owned or operated by Purity in Eastern Massachusetts. There is an exception for agreements that impose restrictions on supermarkets that are located no more than one mile from a new replacement supermarket owned and operated by Stop & Shop or SSC Associates when the restrictions are entered into within six months of the opening of the new replacement store. In addition, Stop & Shop and SSC Associates may not remove any equipment from a supermarket they own or operate prior to a sale, sublease, assignment, or change in occupancy, except in the ordinary course of business or certain other circumstances.

Stop & Shop and SSC Associates are required to provide to the Commission a report of compliance with the order within sixty (60) days following the date the order becomes final, every sixty (60) days thereafter until the divestitures are completed, and annually for a period of ten years.

Stop & Shop and SSC Associates also entered into an Asset Maintenance Agreement. Under the terms of the Asset Maintenance Agreement, from the time Stop & Shop and SSC Associates acquire the assets of Purity that must be divested until the divestitures set out in the attached consent agreement have been completed, Stop & Shop and SSC Associates must maintain their viability, competitiveness and marketability, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability.

The purpose of this analysis is to invite public comment on the proposed consent order to aid the Commission in its determination of whether it should make final the proposed consent order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed consent order, nor is it intended to modify the terms of the agreement and proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in The Stop & Shop Companies, Inc., File No. 951–0086

I concur in the Commission's decision to accept a proposed consent order for public comment to the extent that the order requires divestiture of supermarkets on Cape Cod and the South Shore, but dissent to the extent that the order requires divestiture of stores in the Boston metropolitan area. Although serious questions can be raised about some of the allegations in the complaint that relate to the product market, I find reason to believe that the law has been violated even if the product market includes sales of food and groceries in stores other than traditional supermarkets. Assuming either the product market alleged in the complaint or a broader product market, I concur in the decision to accept the order as to Cape Cod and South Shore. I dissent from the decision to require divestiture of stores in the Boston metropolitan area. Although a small geographic market theoretically may exist within a broad metropolitan area, at this time the record before the Commission does not contain sufficient evidence to support a finding of reason to believe that the communities of Saugus, Medford, Brookline, Roslindale, Watertown, Weymouth, Brockton and Bedford, Massachusetts are relevant antitrust markets.

[FR Doc. 95–27685 Filed 11–7–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Data Collections Available for Public Comment and Recommendations

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. 42 CFR 50 Subpart B: Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—Annual Responses: 40,000; Burden per Response: one hour; Total Burden for Consent Form: 40,000 hours—Burden Estimate for Recordkeeping Requirement—Number of Recordkeepers: 4,000; Average Burden per Recordkeeper: 2.5 hours; Total Burden for Recordkeeping: 10,000 hours. Total Burden: 50,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: October 31, 1995.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 95–27614 Filed 11–7–95; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committee Meetings; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Action.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. The meeting was announced in the Federal Register of October 20, 1995 (60 FR 54233). The amendment is being made to remove probucol, new drug application (NDA) 17–535 (Lorelco®, Hoechst Marion Roussel) for a lipid altering indication from the agenda, and change the time schedule. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 20, 1995, FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on November 16 and 17, 1995.

On page 54233, in the first column, the ''*Date, time, and place*'' and the ''*Type of meeting and contact person*'' portions of this meeting are amended, and in the second column, the ''*Open committee discussion*'' portion of the meeting is amended to read as follows:

Date, time, and place. November 16, 1995, 1 p.m., and November 17, 1995, 8 a.m., Holiday Inn—Silver Spring, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open public hearing, November 16, 1995, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. and 6 p.m.; open public hearing, November 17, 1995, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 2 p.m.; Kathleen R. Reedy, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, FAX 301–443–0699, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536.

Open committee discussion. On November 16, 1995, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of dexfenfluramine hydrochloride, NDA 20–344 (Redux®, Interneuron Pharmaceuticals, Inc.), for an obesity indication, as followup to the meeting of September 28, 1995. On November 17, 1995, the committee will hear presentations and discuss data submitted regarding the safety and efficacy of sodium fluoride USP, NDA 19–975 (Slow Fluoride®, Texas Southwest Medical Center), for an osteoporosis indication.

Dated: November 2, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–27616 Filed 11–7–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Notice of Meeting; AIDS Research Program Evaluation Working Group

Notice is hereby given of the meeting of the NIH AIDS Research Program Evaluation Working Group Area Review Panel on Drug Discovery on November 29–30, 1995 at the Doubletree Hotel at Lincoln Center, 5410 LBJ Freeway, Dallas, Texas 75240. The meeting will be open to the public from 9:00 am to 12:00 pm on November 29, and the closed portion will be from 1:00 pm to 6:00 pm on November 29, and 7:00 a.m. to 10:30 am on November 30.

The NIH Revitalization Act of 1993 authorizes the Office of AIDS Research (OAR) to evaluate the AIDS research activities of NIH. The NIH AIDS Research Program Evaluation Working Group was established by the OAR to carry out this major evaluation initiative, reviewing and assessing each of the components of the NIH AIDS research endeavor to determine whether those components are appropriately designed and coordinated to answer the critical scientific questions to lead to better treatments, preventions, and a cure for AIDS. Six Area Review Panels were also established to address the following research areas: Natural History and Epidemiology; Etiology and

Pathogenesis; Clinical Trials; Drug Discovery; Vaccines; and Behavioral and Social Sciences Research.

The purpose of the meeting is to seek input from individuals and organizations interested in the evaluation of AIDS research in the areas of therapeutics research as it pertains to drug discovery. Examples of areas under consideration by the panel include basic and applied research in HIV and opportunistic diseases, molecular and structural research, targeted drug discovery programs and animal models. The NIH AIDS Research Program Evaluation Working Group will develop recommendations to be made to the Office of AIDS Research Advisory Council that address the overall NIH AIDS research initiatives, both intramural and extramural, and identify long-range goals in the relevant areas of science. These recommendations will provide the framework for future planning and budget development of the NIH AIDS research program.

There will be a closed session from 1:00 pm to 6:00 pm on November 29, and 7:00 a.m. to 10:30 am on November 30, to update the Panel members on privileged information on institute and center grant and contract portfolios.

The open session from 9:00 am to 12:00 pm will begin with a brief overview of panel activities by members of the panel. The remainder of the meeting will be devoted to presentations from individuals and organizations. The session is open to the public; however, attendance may be limited by seat availability.

Comments should be confined to statements related to the current status NIH AIDS research in the areas of drug discovery for HIV–1 and its associated sequelae and recommendations for consideration by the panel in assessing and reviewing the relevant research in these areas.

Only one representative of an organization may present oral comments. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations must submit a letter of intent to present comments and three (3) typewritten copies of the presentation, along with a brief description of the organization represented, to the attention of Dr. Judith Feinberg, Office of AIDS Research, NIH, 31 Center Drive, MSC 2340, Building 31, Room 5C08, Bethesda, MD 20892–2340, (301) 496–0358, FAX: (301) 402–8638. Letters of intent and copies of presentations must be received no later than 5:00 pm on Wednesday, November 22.

Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, and at the discretion of the Chairperson.

Individuals wishing to provide only written statements should send three (3) typewritten copies of their comments, including a brief description of their organization, to the above address no later than 5 pm on November 22. Statements submitted after that date will be accepted. They may not, however, be made available to the Area Review Panel prior to the meeting, though they will be provided subsequently as written testimony.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Feinberg in advance of the meeting.

Dated: November 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27636 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the closed meetings of the National Cancer Institute Special Emphasis Panel (SEP) of the National Cancer Institute scheduled for November 13 and 15, 1995, which was published in the Federal Register on October 25 (60 FR 54696).

The meetings were canceled due to administrative complications.

Dated: November 3, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27633 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on November 27–29, 1995. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: Subcommittee on Cancer Centers.

Contact Person: Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, room 300, 6130 Executive Blvd., Bethesda, MD 20892–7094; (301) 496–8537.

Date of Meeting: November 27, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Open: 7 pm to 8 pm.

Agenda: To discuss the cancer centers.

Name of Committee: Subcommittee on Clinical Investigations.

Contact Person: Dr. Robert E. Wittes, Acting Executive Secretary, National Cancer Institute, NIH, Building 31, room 3A52, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–4291.

Date of Meeting: November 27, 1995.

Place of Meeting: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Open: 8 pm to 9 pm.

Agenda: To discuss cancer clinical investigation issues.

Name of Committee: National Cancer Advisory Board.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, room 600A, 6130 Executive Blvd., Bethesda, MD 20892–7045; (301) 496–5147.

Date of Meeting: November 28–29, 1995.

Place of Meeting: Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

Open: November 28—8 am to approximately 12 noon; November 28—2:30 pm to approximately 5:30 pm; November 29—8 am to approximately 4 pm.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Legislative Update; New Business; Strategic Planning and the Bypass Budget; Division of Basic Sciences Overview; Role of Intramural Board of Scientific Counselors; Division of Clinical Sciences Overview; Division of Cancer Epidemiology and Genetics Overview; Discussion of Intramural Program Integration; Scientific Highlights; Division of Cancer Treatment, Diagnosis and Centers Overview; Division of Cancer Biology Overview; Frederick Cancer Research and Development Center Overview; Grant Application Information and Format of Review Presentations; Subcommittee Reports; Division of Cancer Prevention and Control Overview; and Role of the Extramural Advisory Board.

Name of Committee: Subcommittee on Planning and Budget.

Contact Person: Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, Building 31, room 11A19, Bethesda, MD 20892; (301) 496–5515.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 12:15 pm to 1:30 pm.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Subcommittee for Special Priorities.

Contact Person: Ms. Iris Schneider, Executive Secretary, National Cancer Institute, NIH, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 1:30 pm to 2:30 pm.

Agenda: To discuss issues related to special priorities.

Name of Committee: Subcommittee on Information and Cancer Control.

Contact Person: Mr. Paul Van Nevel, Executive Secretary, National Cancer Institute, NIH, Building 31, room 10A31, 9000 Rockville Pike, Bethesda, MD 20892; (301) 496–6631.

Date of Meeting: November 28, 1995.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Open: 5:30 pm to 6:30 pm.

Agenda: To discuss information and cancer control issues.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27635 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 11–13, 1995. The meeting will be held in the 11th Floor Solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public on December 11 from 9:45 a.m. to 12:30 p.m. On December 12 the meeting will be open from 9:30 a.m. until 12:15 p.m. During the open sessions, the permanent staff of the Laboratory of Immunology will present and discuss their immediate, past and present research activities.

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 December 11 from 8:30 a.m. until 9:45 a.m., and from 12:30 p.m. until recess; on December 12 from 8:30 a.m. until 9:30 a.m., and from 12:15 p.m. until recess; and on December 13 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal 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. 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. Thomas J. Kindt, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health)

Dated: October 30, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27632 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of 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: Microbiological and Immunological Sciences.

Date: November 28, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 30, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Multidisciplinary Sciences.

Date: December 3–5, 1995.

Time: 8:00 p.m.

Place: Tarrytown Hilton Inn, Tarrytown, New York.

Contact Person: Dr. Houston Baker, Scientific Review Administrator, 6701 Rockledge Drive, room 5208, Bethesda, Maryland 20892, (301) 435–1175.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 4, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 5, 1995.

Time: 10:30 a.m.

Place: NIH, Rockledge 2, room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Biological and Physiological Sciences.

Date: December 28, 1995.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, room 4152, Bethesda, Maryland 20892, (301) 435–1720.

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.

(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: November 2, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–27634 Filed 11–7–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1995.

The meeting of the CMHS National Advisory Council will include a discussion of the mission and programs of the Center, administrative announcements and program developments. It will focus on effective models of delivering quality mental health services in managed care, the most effective models in preventing homelessness among adults with Severe Mental Illness (SMI) and a determination of the effectiveness of early intervention services for children. The Council will also be performing a review of individual contract proposals; therefore, portions of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and/or a roster of Council members may be obtained from: Gloria Yockelson, Committee Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–7919.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services, National Advisory Council.

Meeting Dates: December 7–8, 1995.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Chevy Chase, Maryland 20814.

Closed: December 7, 9:00 a.m.–10:00 a.m.

Open: December 7, 10:00 a.m.–5:00 p.m.

Open: December 8, 9:00 a.m.–adjournment

Contact: Anne Mathews-Younes, Ed.D., Room 11C–26, Parklawn Building, Telephone: (301) 443–3606.

Dated: November 2, 1995.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 95–27615 Filed 11–7–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3937–N–02]

Notice of Extension of Due Date for Notice of Funding Availability for FY 1995 Historically Black Colleges and Universities Program Community Development Corporations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Due Date for Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This notice extends to January 11, 1996 the application due date for the FY 1995 Historically Black Colleges and Universities (HBCU) Program Community Development Corporations NOFA published on September 29, 1995.

DATES: This notice extends the application due date from November 28, 1995 to January 11, 1996. No applications will be accepted after 4:30 PM on January 11, 1996. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. *Applications may not be submitted by facsimile (FAX).*

ADDRESSES: FOR AN APPLICATION KIT CONTACT: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU CDC Program. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is 1–800–877–8339. (This is a toll-free number.) When requesting an application kit, please refer to document FR–3937 and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU CDC application kits should be made immediately. HUD will distribute application kits as soon as they become available.

APPLICATION SUBMISSION: An original and three copies of the completed application must be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU CDC Program.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7216, Washington, D.C. 20410. Telephone Number: (202) 401–7912. This is not a toll free number. Access to this information is available to the hearing impaired through the Federal Information Relay Service at 1–800–877–8339. This is a toll-free number.

SUPPLEMENTARY INFORMATION: On September 29, 1995 (60 FR 50700), HUD published a FY 1995 HBCU NOFA announcing the availability of up to $2.5 million of Fiscal Year 1995 funds for ten Historically Black Colleges and Universities to form Community Development Corporations (CDCs) to undertake eligible activities. The application due date given in that publication is November 28, 1995. In order to provide more time for the preparation of applications under the NOFA, which differed in its focus from previous HBCU NOFAs, this notice extends the application due date to January 11, 1996.

Dated: November 2, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–27590 Filed 11–7–95; 8:45 am]

BILLING CODE 4210–29–P

[Docket No. FR–3945–N–02]

Office of the Assistant Secretary for Community Planning and Development; Notice of Clarifications and Extension of Due Date for Notice of Funding Availability for FY 1995 Historically Black Colleges and Universities Program Projects With Units of General Local Government

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Extension of Due Date and Clarifications to Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1995.

SUMMARY: This notice extends to January 12, 1996 the application due date for the FY 1995 Historically Black Colleges and

Universities (HBCU) Program Units of General Local Government NOFA published on September 29, 1995, and provides clarification of some terms used in that NOFA.

DATES: No applications will be accepted after 4:30 PM on January 12, 1995. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. *Applications may not be submitted by facsimile (FAX).*

ADDRESSES: FOR AN APPLICATION KIT CONTACT: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU UGLG Program. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is 1–800–877–8339. (This is a toll-free number.) When requesting an application kit, please refer to document FR–3945 and provide your name, address (including zip code), and telephone number (including area code). Requests for HBCU UGLG application kits should be made immediately. HUD will distribute application kits as soon as they become available.

APPLICATION SUBMISSION: An original and three copies of the completed application must be submitted to the following address: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7255, Washington, D.C., 20410–3500. ATTN: HBCU CDC Program.

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7253, Washington, D.C. 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On September 29, 1995 (60 FR 50694), HUD published a FY 1995 HBCU NOFA announcing up to $1.5 million of FY 1995 funding for Historically Black Colleges and Universities (HBCU) to undertake jointly funded Community Development Block Grant (CDBG) projects with units of general local government (UGLG). The application due date given in that publication is November 28, 1995. In order to provide more time for the preparation of applications under the NOFA, which differed in its focus from previous HBCU NOFAs, this notice extends the application due date to January 12, 1996.

In response to inquiries concerning the HBCU UGLG NOFA published on September 29, 1995, HUD in this notice is also providing the following clarification of terms used in that NOFA:

The joint program efforts to be undertaken by HBCUs with units of general local governments to establish multiple use community services facilities on HBCU campuses are joint *new construction or major reconstruction* projects. This clarification, emphasizes, and is consistent with, the statement in the third column on p. 50694 of the NOFA: ''Those applicants planning to use funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities.''

Additional clarification is provided with respect to the definition of ''campus.'' As used in the NOFA, ''campus'' means the grounds and buildings of a university or college.

Dated: November 2, 1995.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 95–27591 Filed 11–7–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–06–1100–03]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to Rescind Proposed Plan Amendment.

SUMMARY: Notice is hereby given that the Proposed Plan Amendment/ Environmental Assessment for the Book Cliffs Resource Management Plan has been rescinded.

DATES: None.

ADDRESSES: Questions regarding the rescinding of the proposed plan amendment should be addressed to Paul Andrews, Area Manager, Vernal District Office, 170 South 500 East, Vernal, Utah, 84078. Phone: (801) 781–4400.

FOR FURTHER INFORMATION CONTACT: Paul M. Andrews, Area Manager, Book Cliffs Resource Area, at 170 South 500 East, Vernal, Utah 84078; Phone: (801) 781–4400.

SUPPLEMENTARY INFORMATION: Previously unidentified concerns have surfaced regarding the recently submitted Book Cliffs Divide Forage Reallocation and Public Road Access Resource Management Plan Amendment. As these concerns may have merit, the proposed plan amendment is hereby withdrawn until these concerns have been reviewed and any necessary actions taken to resolve them, if possible. In accordance with 43 CFR 1610.5–2, the protest process for the Proposed Plan Amendment will then be reinitiated.

Dated: November 1, 1995.

G. William Lamb,

State Director.

[FR Doc. 95–27654 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–DQ–P

[Colorado; CO–930–06–1020–00]

Notice of Intent To Modify Resource Management Plans and To Prepare an Environmental Impact Statement to Adopt Standards for Rangeland Health and Guidelines for Grazing Management in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Intent to modify Resource Management Plans within Colorado and to prepare an Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) in Colorado intends to modify all existing Resource Management Plans (RMP) in the State and to prepare appropriate National Environmental Policy Act (NEPA) analysis for the adoption of Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100). Two additional RMPs that are currently being developed will also be modified as a result of this effort. Public comment is sought on the issues and alternatives to be considered, and on suggested standards and guidelines.

DATES: Comments will be accepted throughout the process of modifying plans and preparation of NEPA analysis. However, comments received after January 2, 1996, may not be reflected in the alternatives considered in the draft environmental impact statement or other NEPA analysis.

FOR FURTHER INFORMATION CONTACT: Jim Sazama, Team Leader, Bureau of Land Management, 2505 South Townsend, Montrose, CO 81401; phone 970–249–6047.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR Part 4100), which became effective August 21, 1995, provide for the development of Standards for Rangeland Health and Guidelines for Grazing Administration. In Colorado, BLM intends to develop these standards and guidelines through the BLM's planning process. Incorporating standards and guidelines into existing plans will require some form of plan modification, ranging from simple plan maintenance to plan amendment. Resource Management Plans to be modified are: Glenwood Springs, Grand Junction, Gunnison, Kremmling, Little Snake, Northeast, San Juan/San Miguel, San Luis, and Uncompahgre Basin RMPs. Two other RMPs that are currently being completed, the Royal Gorge RMP and White River RMP, will also be modified, as appropriate. Modifying all of Colorado BLM's RMPs at the same time is intended to streamline efforts and to provide for a broader view of rangeland ecosystems.

At this point, it is uncertain what level of plan modification will be needed, plan maintenance or plan amendment. Similarly, the level of environmental analysis appropriate under the Council on Environmental Quality's regulations implementing NEPA (40 CFR Part 1500) may vary. Should it be determined that no environmental impact statement is needed, NEPA analysis will be accomplished via an environmental assessment.

Public input on standards and guidelines for Colorado was received at a series of workshops conducted in early September 1995. Input has also been received from Colorado BLM's Front Range, Southwest and Northwest Resource Advisory Councils.

This notice invites additional public comment on the proposal to develop standards and guidelines and to modify the affected Resource Management Plans. Public comment is invited on the issues to be addressed and alternatives to be considered in the Environmental Impact Statement or other NEPA analysis.

Issues preliminarily identified include: the effect that adoption of the standards will have on uses of public land, the effect that adoption of the proposed guidelines will have on grazing management and livestock operations, and the need for flexibility in standards and guidelines.

Three preliminary alternatives have been identified: the continuation of current management as provided for in existing land use plans, the application of the fallback standards and guidelines contained in the regulations (No Action), and the adoption of standards and guidelines developed locally and in consultation with Colorado BLM's three Resource Advisory Councils.

The NEPA analysis will be conducted using an interdisciplinary team that includes persons trained in archaeology, economics, plant ecology, hydrology, soil science, range management, and wildlife management.

Dated: October 26, 1995.

Donald R. Glaser,

State Director, Colorado.

[FR Doc. 95–27583 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–JB–P

Bureau of Reclamation

Southern Nevada Water Authority Treatment and Transmission Facility, Clark County, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft environmental impact statement and notice of public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation, and the Southern Nevada Water Authority (SNWA) have prepared a draft environmental impact statement (DEIS) on a new water treatment and transmission facility (TTF) proposed by SNWA. The SNWA proposes to construct an intake structure, water treatment facility and associated transmission pipelines to treat and convey Colorado River water from Lake Mead to the Las Vegas Valley. The DEIS describes and presents the environmental effects of six alternatives, including no action, associated with the construction and operation of the proposed TTF. The Federal Actions would be the issuance of permits, rights-of-way, and modification of existing water delivery contracts.

DATES AND LOCATIONS: There will be five public hearings at the following locations:

- Boulder City Hall, City Council Chambers, 401 California Avenue, Boulder City, NV.
- Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- Cashman Field Center, Meeting Rooms 101–102, 850 Las Vegas Boulevard North, Las Vegas, NV.
- North Las Vegas City Library, Community Room, 2300 Civic Center Drive, North Las Vegas, NV.
- Henderson Convention Center, 200 South Water Street, Henderson, NV.

Dates and times of the hearings will be announced in the local media. A 90-day public review period commences with the publication of this notice. Written comments will be accepted by Reclamation at the address noted below.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Shrader, Manager, Environmental Compliance Group, Bureau of Reclamation, Attention: Mr. James P. Green LC–2206, P.O. Box 61470, Boulder City, Nevada 89006–1470, Telephone: (702) 293–8519; or Mr. David Connally, EIS Manager, Southern Nevada Water Authority, 1850 East Flamingo Road, Suite 234, Las Vegas, Nevada 89119, Telephone: (702) 732–1982. Copies of the DEIS are available for inspection at the above addresses and at libraries in the project vicinity.

SUPPLEMENTARY INFORMATION: The DEIS evaluates the effects of the construction and operation of a new water TTF to divert existing State of Nevada allocation of Colorado River water from Lake Mead, treat it, and convey it to the Las Vegas Valley, Nevada. Three issues are related to water facility infrastructure in the Las Vegas Valley. First, the Valley is dependent on a single water treatment and delivery facility for 85 percent of its water. Second, the capacity of the existing facility to deliver Colorado River water will be insufficient to meet projected water demands by the year 1997, and third, the existing water facility infrastructure cannot provide full access to Nevada's Colorado River water allocation under the current pattern of seasonal water use. With these considerations in mind, the SNWA conceived of the TTF as an independent facility for the treatment and transmission of Colorado River water to the Valley. The goal of the proposed SNWA–TTF project is:

> To develop a reliable and demand-responsive municipal water system that will supplement the existing Southern Nevada Water System during periods of curtailed production or system failure, and provide the State of Nevada full access to its Colorado River water allocation.

Results of supply and demand projections for the SNWA service area suggest that summer shortages due to insufficient facility capacity could occur as soon as the summer of 1997 unless system improvements are made. Current

improvements to the existing Southern Nevada Water System may prolong the ability of the SNWA purveyors to provide adequate water supplies to the year 2000.

Six alternatives, including no action, are considered in the DEIS. Three alternatives propose a new intake structure at Saddle Island, with pumping stations, buried pipelines, construction of a new tunnel or use of an existing tunnel, a new water treatment facility (WTF), and a distribution system in Las Vegas Valley. Two other alternatives propose tapping into existing piping in underground chambers in the west wall of Black Canyon below Hoover Dam, an underground pumping station, tunnels, buried pipelines, a new WTF, and a distribution system in the Valley. The two alternative families share common elements. The preferred alternative proposes a new intake structure at Saddle Island, pumping stations, buried pipelines, use of an existing tunnel, a new WTF, and a distribution system in the Las Vegas Valley.

Environmental consequences that would result from the alternatives, but could be mitigated to a level of insignificance by implementation of mitigation measures, include: biological resources, cultural resources, noise and vibration, recreation, traffic, and water resources. Environmental consequences that would remain significant after implementation of mitigation measures include: aesthetics, air quality, and land use and socio-economics. There would be beneficial impacts to land use and socio-economics, associated with provision of water to lightly-developed areas, obviating the need for water wells, and provision of water supplies for potential economic diversification in the project area.

Those wishing to schedule time, in advance, to make oral comments at a particular hearing should contact the Bureau of Reclamation and indicate at which session the speaker wishes to appear. Speakers will be called in order of their requests. Requests to speak may be made at each session and will be called after advance requests. Oral comments will be limited to 10 minutes per individual.

Dated: October 24, 1995.

William E. Rinne,

Director Resource Management and Technical Services.

[FR Doc. 95–27699 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–94–P

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Carlos Diez, University of Central Florida, Orlando, FL PRT–808254

The applicant requests a permit to export carapacial scute samples from hawksbill sea turtle (*Eretmochelys imbircata*) to Dr. Ohtaishi, Hokkaido University, Sapporo, Japan for use in age determination research. This notice covers activities conducted by the applicant for a five year period.

Applicant: The Hawthorn Corporation, Grayslake, IL, PRT–722075

The applicant requests a permit to reexport and reimport tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Florida Museum of Natural History, Gainesville, FL, PRT–677336

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research.

Applicant: Svend & Lilli Kristensen, Brandon, FL, PRT–703702

The applicant requests a permit to reexport and reimport captive-born leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 3, 1995.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 95–27628 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–55–P

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Endangered Smith's Blue Butterfly and Other Species of Special Concern on the North of Playa Project, Sand City, California

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Availability.

SUMMARY: D.B.O. Development Company of Pacific Grove, California, (applicant) has applied to the Fish and Wildlife Service (Service) for a 5-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue an incidental take permit and provide assurances for the endangered Smith's blue butterfly (*Euphilotes enoptes smithi*), endangered sand gilia (*Gilia tenuiflora* ssp. *arenaria*), threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), proposed endangered black legless lizard (*Anniella pulchra nigra*), and candidate sandmat manzanita (*Arctostaphylos pumilla*) and Monterey ceanothus (*Ceanothus rigidus*) on the proposed 33-acre North of Playa Redevelopment project site in Sand City, Monterey County, California. The proposed permit would be effective upon issuance for species currently listed under the Act. For unlisted covered species, the permit would become effective upon their listing under the Act. Plants would be covered to the extent that take is prohibited by the Act.

This notice opens the comment period on the joint Environmental Assessment (EA) and permit application package, which includes the Habitat Conservation Plan (HCP) and Implementation Agreement (IA). All

comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments on the HCP, EA, and IA should be received on or before December 8, 1995.

ADDRESSES: Comments should be addressed to Ms. Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958. Please refer to permit no. PRT–808240 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McCalvin, Fish and Wildlife Biologist, at the above address (805–644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Ventura Field Office at the above referenced address and telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background

D.B.O. Development Company proposes to develop a 33-acre site known as the North of Playa Redevelopment project site in Sand City, Monterey County, California. This site is known to support populations of the endangered Smith's blue butterfly, the endangered sand gilia, and the threatened Monterey spineflower. The site also supports populations of the black legless lizard, proposed for listing as an endangered species, and the sandmat manzanita and Monterey ceanothus, candidates for listing.

Listed animal species are protected pursuant to section 9 of the Act against take; that is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect the species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act.

The EA considers the environmental consequences of four alternatives: proposed action, no action, reduced intensity development, and no development. The reduced intensity and no development alternatives were found infeasible because they are inconsistent with Sand City's development goals and because they would not substantially benefit the species discussed above.

The proposed action would result in the loss of approximately 6 acres of coastal dune scrub habitat and ruderal vegetation. This action could directly and indirectly affect the species described above. The Service would issue an incidental take permit to the applicant for the take of the endangered Smith's blue butterfly. In addition, the applicant seeks Federal assurances that no additional land restrictions or financial compensation would be required for species adequately covered by the HCP. To accomplish this, all species covered in the HCP would be included in the incidental take permit on the condition that avoidance, minimization, and reserve management measures identified for these species in the HCP are implemented.

The proposed Federal action would authorize the incidental take of all Smith's blue butterflies on approximately five clusters of host plants (*Eriogonum parvifolium* and *E. latifolium*) on approximately 0.5 acre that historically supported varying numbers of the Smith's blue butterfly. Issuance of the permit would also result in the loss of 6 acres of relatively low quality habitat for the black legless lizard. Between 10 and 59 individual black legless lizards could occur in this portion of the site. In addition, three of the four existing colonies of sand gilia documented on the site, and all Monterey spineflowers would be removed. In 1995, approximately 1,000 and 1,200 individuals, respectively, of these annual species were detected on-site. Issuance of the permit would result in the removal of all of the sandmat manzanita (approximately 262 plants) and Monterey ceanothus (approximately 203 plants) currently identified on the project site.

The proposed action would establish and provide management for a mitigation area of approximately 4.6 acres where coastal dune scrub vegetation and associated special status species would be restored, enhanced, and protected in perpetuity. Included in this mitigation area would be approximately 1.5 acres of existing Smith's blue butterfly habitat which is proposed to be expanded through establishment of additional buckwheat foodplants and removal of non-native invasive vegetation. The black legless lizard and special status plant species would be salvaged from the project site and relocated to the mitigation site. Funds for relocation, restoration, and monitoring for 5 years would be provided by the applicant. Long-term maintenance of the area would be the responsibility of Sand City, which would receive and administer annual project-assessment fees specifically for maintenance of the habitat area.

The no action or no permit alternative would result in buildout of the project site as approved by Sand City with avoidance of and setbacks from the Smith's blue butterfly foodplants. Approximately 600 sand gilia plants would be removed under this alternative. Impacts to the other species would be similar to the proposed action alternative. However, none of the mitigation measures proposed under the proposed action alternative for these species, including restoration and protection of the mitigation area, would occur.

This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If the Service determines that the requirements are met, an incidental take permit will be issued for covered species. The final NEPA and permit determinations will be made no sooner than 30 days from the date of this notice.

Dated: November 1, 1995.

David L. McMullen,

Acting Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–27644 Filed 11–7–95; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Preliminary)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

in the United States is threatened with material injury [2] by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock,[3] provided for in subheadings 3924.90.20, 3926.90.90, 3926.90.95, and 3926.90.98 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 8, 1995, a petition was filed with the Commission and the Department of Commerce by Marley Mouldings, Inc., Marion, VA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of foam extruded PVC and polystyrene framing stock from the United Kingdom. Accordingly, effective September 8, 1995, the Commission instituted antidumping investigation No. 731–TA–738 (Preliminary). The petition in this investigation was filed subsequent to the effective date of the Uruguay Round Agreements Act (''URRA''). This investigation, thus, is subject to the substantive and procedural rules of the law as modified by the URAA. *See* Public Law 103–465, approved Dec. 8, 1994, Stat 4809, at § 291.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 18, 1995 (60 F.R. 48167). The conference was held in Washington, DC, on September 29, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 23, 1995. The views of the Commission are contained in USITC Publication 2930 (October 1995), entitled ''Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom: Investigation No. 731–TA–738 (Preliminary).''

Issued: October 25, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27689 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Carol T. Crawford and Commissioner Lynn M. Bragg find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the United Kingdom of foam extruded PVC and polystyrene framing stock that are alleged to be sold in the United States at LTFV.

[3] For purposes of this investigation, the subject product consists of all extruded PVC and polystyrene framing stock regardless of color, finish, width or length. Finished frames assembled from foam extruded PVC and polystyrene framing stock are excluded.

[Investigation No. 337–TA–371]

Certain Memory Devices With Increased Capacitance and Products Containing Same; Notice

Notice is hereby given that the prehearing conference and hearing in this matter scheduled to commence at 10:00 a.m. on November 6, 1995, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. S.W., Washington, D.C., is cancelled.

The Secretary shall publish this notice in the Federal Register.

Issued: November 2, 1995.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 95–27688 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 753–TA–33]

Roses From Israel; Import Investigation

Determination

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. § 1675b(b)(4)) (the Act), the Commission hereby determines that an industry in the United States is not likely to be materially injured by reason of imports from Israel of roses if the countervailing duty order on such merchandise were to be revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests must be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act.

On May 26, 1995, the Department of Commerce (Commerce) published in the Federal Register notice of opportunity to request injury investigation(s) under section 753 of the Act (60 F.R. 27963, May 26, 1995). In that notice, Commerce stated that, for those countries becoming signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995. In addition, Commerce noted that in the case of Israel, that country became a signatory to the Subsidies Agreement on April 21, 1995.

Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination with regard to the question of the likelihood of material injury by reason of imports of the subject merchandise if the order is revoked. As of October 23, 1995, the Commission had not received a request for investigation under section 753(a) with regard to the outstanding countervailing duty order on roses from Israel. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative injury determination with regard to the outstanding countervailing duty order on roses from Israel.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810.

Authority

This determination is being made under authority of the Tariff Act of 1930, title VII, as amended by the URAA. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 30, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–27687 Filed 11–7–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32547]

Kansas City Southern Railway Company—Construction and Operation Exemption—to Exxon Corporation's Plastics Plant Near Baton Rouge and Baker, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of conditional exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 Kansas City Southern Railway Company's (KCS) construction and operation of a line of railroad. The proposed line would be about .375 miles long, beginning at KCS milepost 40 + 07.2 on the KCS Stupp lead, located near the intersection of U.S. Highway 61 and Thomas Road (LA Hwy 423), near Baker, LA, and connecting with the industry track facilities of the Exxon Corporation's Baton Rouge Plastics Plant located south of Thomas Road (LA Hwy 423) near Baker, LA. (milepost 17 + 99.8 of the Stupp lead).

DATES: Petitions to reopen must be filed by November 28, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32547 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: John R. Molm, Troutman Sanders, 601 Pennsylvania Avenue, N.W., Suite 640, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Decided: October 30, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27677 Filed 11–7–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 22, 1995, Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance levorphanol (9220).

The firm plans to manufacture finished dosage forms for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 8, 1996.

Dated: October 24, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–27675 Filed 11–7–95; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–27]

Hugh I. Schade, M.D.; Denial of Application

On February 25, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Hugh I. Schade, M.D., (Respondent) of San Jose, California, notifying him of an opportunity to show cause as to why DEA should not deny his pending application, executed on August 28, 1992, for registration as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that: (1) In September and October 1987 a DEA inspection of the Respondent's registered location revealed discrepancies in his recordkeeping and security, including the storage of controlled substances at an unregistered location, and an audit revealed overages and shortages of controlled substances, including a shortage of 4,193 dosage units of Diazepam, a Schedule IV controlled substance; (2) during the DEA audit, the Respondent and his wife admitted to personally using acetaminophen with codeine products and Anexsia, a Schedule III controlled substance, out of office stock, since 1985, without recording the usage; (3) on September 12, 1989, the Respondent was arrested on thirty-one counts of violating the California Health and Safety Code by prescribing controlled substances without a legitimate medical purpose and not in the usual course of professional practice; (4) on December 18, 1991, the Respondent was convicted in the Superior Court of California, Santa Clara County, of thirteen felony counts of issuing controlled substance prescriptions without medical cause and one count of manslaughter, arising out of a patient's drug overdose death.

On March 1, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Francisco, California, on October 26 and 27, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 12, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's application for registration be denied, and also writing that ''the Respondent is encouraged to reapply in about one year from the effective date of any final decision in this case.'' Neither party filed exceptions to his decision, and on February 15, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the parties have stipulated to the following: (1) That Anexsia, a brand name for a product containing hydrocodone, is a Schedule III narcotic

controlled substance pursuant to 21 CFR 1308.13(e); (2) that codeine is a Schedule III narcotic controlled substance pursuant to 21 CFR 1308.13(e); (3) that Tylenol No. 3, Tylenol No. 4, and Empirin with codeine, brand names for products containing codeine, are Schedule III narcotic controlled substances pursuant to 21 CFR 1308.13(e); and (4) that Diazepam is a Schedule IV narcotic controlled substance pursuant to 21 CFR 1308.14(c).

In October 1986, an investigation was opened by the DEA after a Diversion Investigator received information that the Respondent had purchased controlled substances containing codeine and dihydrocodeinone in quantities in excess of average U.S. and California practitioners. An administrative inspection warrant was served on the Respondent's Los Gatos Boulevard location in September 1987. Prior to serving the warrant, the investigators determined that the Respondent had only one valid DEA registration, which was for his Los Gatos Boulevard office. However, investigators discovered that the Respondent was storing controlled substances at unregistered locations, to include his medical office on Crown Boulevard in San Jose, and his Almaden Valley residence. The investigators also discovered that the Respondent had failed to take a beginning inventory, to conduct a biennial inventory, and to properly complete DEA Form 222 for Schedule II controlled substances.

An audit was conducted, and the Respondent was unable to account for approximately 3,000 dosage units of acetaminophen with codeine. Although he maintained that he did not know what happened to these dosage units, the Respondent admitted to the investigator that he and his wife had personally used this substance out of office stock without recording the usage. There were also overages and shortages of other controlled substances. Police reports reflected that in late 1983 and early 1984, controlled substances were stolen from the Respondent's office, but such thefts had not been reported to DEA, as required. However, the Respondent had a theft and loss of controlled substances in 1976 and reported that loss to both the local police and the DEA. Also, he testified that he was aware of the requirement to report such incidents to the DEA.

The investigators also examined the physical security provided for the storage of controlled substances, noting that the storage room door was left ajar more than once, and since no staff members controlled access to the area, patients could enter and leave the room undetected. Investigators also learned from the Respondent that storage cabinets containing controlled substances were accessible to drug company representatives as well as patients, without staff supervision.

Following the investigation, the Respondent was charged and convicted in a California Superior Court of involuntary manslaughter and 13 counts of unlawfully prescribing controlled substances. The Respondent appealed the conviction, and the appellate court affirmed the involuntary manslaughter conviction, and, with one judge dissenting, reversed the conviction for unlawfully prescribing controlled substances, finding that the trial court's failure to instruct *sua sponte* on the definition of the term ''addict'' was reversible error. See *People* versus *Schade*, 25 Cal. App. 4th 1605 (Cal. Ct. App. 1994).

The manslaughter conviction stemmed from the Respondent's treatment of John Barker from December 11, 1985, until his suicide by means of an overdose of Tylenol and Darvon on September 17, 1987. The Report of the Respondent's Probation Officer, made of record, contained factual details concerning the manslaughter conviction. Specifically, in treating Mr. Barker, the Respondent prescribed codeine and depressants such as Restoril, Soridol, Soma, and Ativan. On September 9, 1986, the Respondent began prescribing Darvon or Darvocet to Mr. Barker, as well as Dalmane and Halcion. The Physicians' Desk Reference indicates a warning that Darvon should be prescribed with caution when the patient is also taking tranquilizers such as Halcion, Restoril, or Ativan.

On August 21, 1987, Mr. Barker was hospitalized after a suicide attempt in which he took an overdose of multiple medications. The Respondent noted on Mr. Barker's record on August 24, 1987, that he was extremely depressed and had stated that he did intend to take his own life. On September 3, 1987, the Respondent prescribed a depressant, Xanax, and on September 11, 1987, the Respondent prescribed 100 tablets of Darvocet. After Mr. Barker's suicide attempt, relatives confronted the Respondent regarding the prescribed medications and their fear that Mr. Barker again would attempt suicide. The relatives were also concerned that the Respondent had released Mr. Barker too soon after his admission for the suicide attempt, for he was released from the hospital in less than 24 hours after his admission. On September 17, 1987, Mr. Barker was found in his car with the engine running, and the initial impression of the coroner was death by carbon monoxide poisoning. However, results of an autopsy indicated a blood-alcohol level of 0.13 percent and toxic levels of Darvocet, while his carbon monoxide level was a low two percent.

At the trial, Dr. Drottar, an emergency room physician, testified, among other observations, that the Respondent's dispensing of 100 Darvocet tablets three days after a serious suicide attempt was criminal negligence. Psychiatrist Dr. Keins, who evaluated Mr. Barker at the Emergency Psychiatric Services on September 4, 1987, testified that giving Mr. Barker 100 Darvocet tablets at that time would be ''like handing him a loaded gun,'' given his mental status and his depression.

At the hearing before Judge Tenney, the Respondent testified that he had given no specific warnings to Mr. Barker concerning the use of Darvocet with alcohol. He also testified that at the time of his last visit with Mr. Barker, he did not seem depressed and was not threatening suicide. However, the Respondent also testified that, at that time, he did not know about the earlier emergency room overdose treatment.

The Respondent has practiced medicine since 1962 and has a current California license to practice medicine. There are no current actions pending against him before the Medical Board of California. Several of the Respondent's patients testified on his behalf, recounting their friendship with him and his skill as a physician. The Respondent also testified, stating the corrective actions taken after DEA investigators informed him of the need for a DEA Certificate of Registration for each location where he dispensed controlled substances.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether an application for registration should be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, all five factors are relevant. As to factor one, the Respondent has a current California license to practice medicine, and there are no current actions pending before the State medical board. Regarding factors two, ''experience in dispensing * * * controlled substances,'' and four, ''compliance with applicable State, Federal, or local laws,'' 21 U.S.C. 827(a)(3) and 21 CFR 1304.21 and 1304.24 require a registrant who dispenses a controlled substance to maintain a current, complete, and accurate record of every such dispensing of the substance. Also sections 1304.11 to 1304.13, and 1305.06 of the Code of Federal Regulations establish requirements for inventory procedures and for completing DEA Form 222. Yet, the record contains evidence that the Respondent failed to conduct required inventories, was unable to account for about 3,000 dosage units of acetaminophen with codeine, incurred other shortages and overages of controlled substances relegated to his care, and failed to completely and accurately fill out the DEA Form 222. Additionally, both the Respondent and his wife personally used acetaminophen with codeine out of the office supply without recording their personal usage. Such disregard of recordkeeping requirements exemplify the basis for concern about potential diversion of controlled substances resulting from such improper accountability; concerns properly addressed under factors two and four.

Also, 21 CFR 1301.23 requires a separate registration for each location in which controlled substances are to be dispensed, and 21 CFR 1301.71 establish security requirements. Yet the Respondent stored controlled substances at his Crown Boulevard location and at his home, despite the lack of a valid DEA registration for either of those locations. Such actions demonstrate a disregard for these regulatory requirements. Further, the lax security procedures resulting in patients and drug company representatives having access to drug storage areas further demonstrate a disregard for security regulations.

Finally, concerning factor five, the Respondent was convicted in State court of one count of involuntary manslaughter arising out of a patient's drug-overdose death in September 1987. The conviction was affirmed upon appeal. The Deputy Administrator assigns substantial weight to the pattern of behavior exhibited by the Respondent in his prescribing practices to this patient. The threat to the public health and safety of such practices directly impacts upon the public interest.

Although the Deputy Administrator has taken into account the length of time the Respondent has practiced medicine, the lack of prior convictions or adverse State board action, and the testimony of the Respondent's witnesses concerning his contribution to his community and their opinion of his professional care, he also notes the lack of any evidence which provides assurances that the Respondent's future practice will include closer monitoring of patient symptoms and treatment, as well as compliance with Federal and State laws and regulations concerning the dispensing and storage of controlled substances. Such lack of mitigating evidence, coupled with the severity of the circumstances surrounding the involuntary manslaughter death of Mr. Barker, result in a conclusion that the granting of the Respondent's application for a DEA Certificate of Registration at this time would be inconsistent with the ''public interest'' under 21 U.S.C. 823(f). Therefore, the Deputy Administrator finds that the public interest is best served by denying the Respondent's application for a DEA Certificate of Registration. If the Respondent reapplies and submits evidence showing corrective actions taken to bring his practice into conformance with DEA regulations, his application may receive more favorable consideration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 21 CFR 0.100(b) and 0.104, hereby orders that the Respondent's Application for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective December 8, 1995.

Dated: November 2, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–27676 Filed 11–7–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission Open Meeting

SUMMARY: Pursuant to section 10(a) of FACA, this is to announce that the open teleconference meeting of the Glass Ceiling Commission which was to have taken place on Thursday, November 9, 1995 has been rescheduled to Thursday, November 14, 1995.

The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisonmaking positions.

The purpose of this open meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

TIME AND PLACE: The meeting will be held from 2:00 to 3:00 p.m. (EST) in Room C2313 at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis at (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT:

Ms. René Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC, this 3rd day of November, 1995.

René A. Redwood,

Executive Director.

[FR Doc. 95–27735 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Advisory Council on Unemployment Compensation; Notice of Final Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The meeting will be held from 1:00 p.m. to 5:00 p.m. on December 13, 1995 at The Madison Hotel, 15th & M Streets, N.W., Washington, D.C.

AGENDA: The agenda for the meeting is as follows:

(1) Discussion of administrative financing within the unemployment insurance system;

(2) Discussion of performance measurement within the unemployment insurance system;

(3) Discussion of data needs in the unemployment system; and

(4) Discussion of the Council's findings and recommendations.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–4231, Washington, D.C. 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, D.C., this 1st day of November 1995.

Timothy M. Barnicle,

Assistant Secretary of Labor.

[FR Doc. 95–27674 Filed 11–7–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

November 1, 1995.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on November 16–17, 1995.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, N.W., Washington, D.C. A portion of the morning and afternoon sessions on November 16–17, 1995, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 16, 1995, will be as follows:

8:30–9:00 a.m.
Continental Breakfast for Council Members—Room 527

Committee Meetings

(Open to the Public) Policy Discussion

9:00–10:00 a.m.
Education Programs—Room M–14
Public Programs—Room 415
Research Programs—Room M07
Preservation and Access & Challenge Grants—Room 315
Federal-State Partnership—Room 507

10:00 a.m. until Adjourned
(Closed to the Public) Discussion of specific grant applications before the Council

The morning session on November 17, 1995, will convene at 10:30 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff of The National Endowment for the Humanities will be served from 10:00–10:30 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. National Conversation
C. Budget Reports
D. Legislative Report-Reauthorization
E. Committee Reports on Policy and General Matters
1. Overview
2. Education Programs
3. Public Programs
4. Research Programs
5. Preservation and Access & Challenge Grants
6. Federal-State Partnership
7. Jefferson Lecture Committee

(The meeting will be closed to the public at this point.)

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Ms. Sharon I. Block, Advisory Committee Management Officer, Washington, D.C. 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Sharon I. Block,

Advisory Committee Management Officer.

[FR Doc. 95–27592 Filed 11–7–95; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Units No. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Provisional Operating License (POL) No. DPR–5 and Facility Operating License DPR–26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit Nos. 1 and 2, located in Westchester County, New York. The operating authority of POL DPR–5 for Indian Point Nuclear Generating Unit No. 1 was revoked by Commission Order dated June 19, 1980.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's application dated August 10, 1995, for exemption from

certain requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.'' The exemption would allow implementation of a hand geometry biometric system for site access control such that combined picture badges/keycards for certain non-employees can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), ''Access Requirements,'' specifies that ''licensee shall control all points of personnel and vehicle access into a protected area.'' Paragraph (5) of 10 CFR 73.55(d) specifies that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' Paragraph (5) of 10 CFR 73.55(d) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *''

Currently, employee and contractor combined identification badges/keycards are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Indian Point Nuclear Generating Unit Nos. 1 and 2 site. Station security personnel are required to maintain control of the badges while the individuals are offsite. This practice has been in effect at the Indian Point site since the operating license was issued. Security personnel retain each identification badge/keycard, when not in use by the authorized individual, within appropriately designed storage receptacles inside a bullet-resistant enclosure. An individual who meets the access authorization requirements is issued an individual picture identification card/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present configuration, an authorized individual is ''screened'' by the required detection equipment and by the issuing security officer. Having received the badge/keycard, the individual proceeds to the access portal, inserts the badge/keycard into the card reader and passes through the turnstile which unlocks if the badge/keycard is valid.

This present procedure is labor intensive since security personnel are required to verify badge/keycard issuance, ensure badge/keycard retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard number. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards, could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the combined photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area. Authorized individuals insert their badge/keycard into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the ''signature'' template.

Since both the badge/keycard and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not effect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Indian Point Nuclear Generating Unit No. 2.

Agencies and Persons Consulted

In accordance with its stated policy, on September 26, 1995, the staff consulted with the New York State official, Heidi Voelk of the Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 10, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, NY 10610.

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27622 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Proposed Generic Communication; Boraflex Degradation in Spent Fuel Pool Storage Racks (M91447)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning Boraflex degradation in spent fuel pool storage racks. The purpose of the proposed generic letter is to request that licensees who use Boraflex as a neutron absorber in their spent fuel storage racks (1) assess the capability of the boraflex to maintain a 5 percent subcriticality margin and (2) submit a plan of action if this subcriticality margin cannot be maintained by the Boraflex material because of current or projected degradation. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter was endorsed by the Committee to Review Generic Requirements (CRGR) on September 26, 1995. The relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires December 8, 1995. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Laurence I. Kopp (301) 415–2879.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 95–XX: Boraflex Degradation in Spent Fuel Pool Storage Racks (M91447)

Addressees

All holders of operating licenses for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that each addressee that uses Boraflex as a neutron absorber in its spent fuel storage racks (1) assess the capability of the Boraflex to maintain a 5 percent subcriticality margin and (2) submit to the NRC a plan describing its proposed actions if this subcriticality margin cannot be maintained by Boraflex material because of current or projected future Boraflex degradation.

Background

Degradation of Boraflex has been previously addressed by the NRC in Information Notice (IN) 87–43, ''Gaps in Neutron-Absorbing Material in High-Density Spent Fuel Storage Racks,'' September 8, 1987, IN 93–70, ''Degradation of Boraflex Neutron Absorber Coupons,'' September 10, 1993, and IN 95–38, ''Degradation of Boraflex Neutron Absorber in Spent Fuel Storage Racks.'' The Electric Power Research Institute (EPRI) has been studying the phenomenon of Boraflex degradation for several years and recently issued EPRI TR–103300, ''Guidelines for Boraflex Use in Spent-Fuel Storage Racks,'' December 1993, identifying two issues with respect to using Boraflex in spent fuel storage racks. The first issue related to gamma radiation-induced shrinkage of Boraflex and the potential to develop tears or gaps in the material. This phenomenon is typically accounted for in criticality analyses of spent fuel storage racks. The second issue concerned long-term Boraflex performance throughout the intended service life of the racks as a result of gamma irradiation and exposure to the wet pool environment.

Description of Circumstances

Palisades Nuclear Power Station

During the removal of several Boraflex surveillance coupons from the Palisades spent fuel pool in August 1993, a loss of as much as 90 percent of the Boraflex was observed and has been attributed to exposure to high-level gamma radiation in conjunction with interaction with the pool water. The Boraflex in these coupons was sandwiched and bolted between two stainless steel strips, allowing a relatively large area of Boraflex to be exposed to the pool water environment and flow. Neutron attenuation testing (blackness tests) of the actual Palisades storage racks indicated that because of the relatively watertight Boraflex panel enclosures, there was no similar degradation.

South Texas Project

The results of blackness tests performed in August 1994 at South Texas indicated that the Boraflex was degraded, as evidenced by gaps and/or localized washout of the boron content in 20 of the 37 storage cells tested. Of the eight cells that had been designated to receive an accelerated gamma dose, five cells exhibited substantial degradation (0.91 to 1.37 m [3 to 4.5 ft]). The licensee postulated that the degradation mechanism was washout-accelerated dissolution of the Boraflex caused by pool water flow through the panel enclosures. As a justification for continued operation, the licensee has placed restrictions on the use of the

degraded storage cells to ensure compliance with the required subcriticality margin. In addition, a long-term neutron absorption panel management plan is being developed, as well as a dose-to-degradation correlation that will aid in establishing restrictions for the use of the spent fuel racks.

Fort Calhoun Station

As part of the Fort Calhoun Station rerack project, the old spent fuel storage racks containing Boraflex were removed and disassembled in December 1994 to determine the condition of the Boraflex. The new storage racks do not contain Boraflex. The licensee inspected two cells from the removed Boraflex racks which had experienced the highest gamma flux since 1983. Only 40 percent of the Boraflex remained in one of the panels from these cells while another panel in the same cell exhibited no loss of Boraflex. An adjacent cell had a panel which had some Boraflex loss but subsequent attenuation and density tests confirmed that the average boron-10 areal density still exceeded the material minimum certifications. No other storage cells exhibited as significant a loss of Boraflex. The licensee has determined that there was sufficient Boraflex in the walls of each cell to meet the minimum requirements in the design-basis criticality analysis.

Discussion

Experimental data from test programs, including blackness tests performed at various boiling-water reactor (BWR) and pressurized-water reactor (PWR) spent fuel storage pools, confirmed that when Boraflex is exposed to gamma radiation, the material may shrink by as much as 3 to 4 percent. Shrinkage saturates at an integrated gamma exposure of about 1 to 2×10^{10} cGy (1 to 2×10^{10} rad). The application of realistic assumptions based on these tests has demonstrated that the reactivity effects of Boraflex shrinkage and gaps are very small and can generally be accommodated within the existing design basis of most storage racks (EPRI TR–101986, ''Boraflex Test Results and Evaluation,'' February 1993).

Data from laboratory tests and spent fuel pool silica measurements have identified a second factor that could affect storage rack service life: the potential gradual release of silica from Boraflex following gamma irradiation and long-term exposure to the wet pool environment. When Boraflex is subjected to gamma radiation in the pool's aqueous environment, the silicon polymer matrix becomes degraded and silica filler and boron carbide are released. Since irradiated Boraflex typically contains 46 percent of silica, 4 percent of polydimethyl siloxane polymer and 50 percent of boron carbide by weight, the presence of silica in the pool indicates depletion of boron carbide from Boraflex. The loss of boron carbide from Boraflex is characterized by slow dissolution of the silicon polymer from the surface of the Boraflex and a gradual thinning of the material. In a typical spent fuel pool, the irradiated Boraflex represents a significant source of silica (several thousand kilograms) and is the most likely source of pool silica contamination. The boron carbide loss, of course, can result in a significant increase in the reactivity of the storage racks. An additional consideration is the potential for silica transfer through the fuel transfer canal into the reactor core during refueling operations and its effect on the fuel clad heat transfer capability.

EPRI TR–103300 has identified several factors that influence the rate of silica release from Boraflex. The access of water to and around the Boraflex panels is perhaps the most significant factor influencing the rate of silica dissolution from Boraflex. Because of the different rack designs, this water access will vary from plant to plant. The rate of dissolution also increases with higher pool temperature and gamma exposure, suggesting that pool temperatures be maintained as low as practical and that freshly discharged fuel assemblies should not be placed in the same storage cells at each refueling outage. Once silica reaches an equilibrium value, the rate of dissolution essentially stops. However, when water purification systems are used to remove silica from the pool water, the solubility equilibrium becomes unbalanced and panel dissolution resumes.

Because Boraflex is used in spent fuel storage racks for nonproductive absorption of neutrons, a reduction in the amount of Boraflex could result in an increase in the reactivity of the spent fuel pool configuration, which may approach, or even exceed, the current NRC acceptance criterion of k_{eff} no greater than 0.95. The NRC has established this 5 percent subcriticality margin to comply with General Design Criterion (GDC) 62 of Appendix A to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50), which requires the prevention of criticality in fuel storage and handling. Those plants that have installed storage racks containing Boraflex have the 5 percent subcriticality margin included in the plant technical specifications and/or a written commitment to meet this subcriticality margin, as reflected in the plant updated final safety analysis report (FSAR). The technical specifications for most other operating power reactors also include this 5 percent subcriticality requirement.

Safety Assessment

On the basis of test and surveillance information from plants that have detected areas of Boraflex degradation, no safety concern exists that warrants immediate action. Boraflex dissolution appears to be a gradual and localized effect forewarned by relatively high silica levels in the pool water. Because of the safety margin present in spent fuel storage pools, compliance with the required subcriticality margin (or conformance with the same margin to which licensees have committed in their updated FSARs) can be expected to be maintained during the initial stage of Boraflex degradation. This safety margin is due to the 5 percent subcriticality margin assumed in the analysis, the generally lower reactivity of stored fuel than that assumed in the safety analysis, and, in the case of PWRs, the presence of borated water in the pool. However, to verify compliance with both the regulatory requirements of GDC 62 and the 5 percent subcriticality margins, either contained in the technical specifications or committed to in the updated FSARs, and to maintain an appropriate degree of defense-in-depth measures, the NRC staff has concluded that it is appropriate for licensees to submit the following information.

Requested Information

All licensees of power reactors with spent fuel pool storage racks containing the neutron absorber Boraflex are requested to provide a description of the physical condition of the Boraflex, including any deterioration, on the basis of current as well as future projected accumulated gamma exposure and possible water ingress to the Boraflex and state whether a subcritical margin of 5 percent can be maintained for the life of the racks in unborated water. All licensees are further requested to submit to the NRC a description of any proposed actions to monitor or confirm that this 5 percent subcriticality margin can be maintained for the lifetime of the storage racks and describe what corrective actions will be taken in the event it cannot be maintained. Licensees should describe the results from any previous blackness tests and state whether blackness testing will be periodically performed. Any abnormal pool silica levels should also be described. All licensees are requested to submit the information to the NRC to

ensure that the onsite storage of spent fuel is in compliance with GDC 62 for the prevention of criticality in fuel storage and handling and with the 5 percent subcriticality margin position of the NRC staff to assure compliance with GDC 62.

Required Response

All addressees are required to submit a written response to the information requested above within 120 days of the date of this generic letter. If an addressee chooses not to respond to specific questions, an explanation of the reason and a description of any proposed alternative course of action should be provided, as well as the schedule for completing the alternative course of action (if applicable), and the safety basis for determining the acceptability of the planned alternative course of action.

Address the required written reports to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, under oath or affirmation under the provisions of Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, submit a copy to the appropriate regional administrator.

Backfit Discussion

This generic letter only requires information from the addresses under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). Therefore, the staff has not performed a backfit analysis. The information requested will enable the NRC staff to determine whether licensees are complying with the current licensing basis for the facility with respect to GDC 62 for the prevention of criticality in fuel storage and handling and 5 percent subcriticality margins either contained in the technical specifications, or committed to in the updated FSARs, of plants containing Boraflex in the spent fuel storage racks. The staff is not establishing a new position for such compliance in this generic letter. Therefore, this generic letter does not constitute a backfit and no documented evaluation or backfit analysis need be prepared.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

The information collections contained in this request are covered by the Office of Management and Budget clearance number 3150–0011, which expires July 31, 1997. The public reporting burden for this collection of information is estimated to average 150 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Dated at Rockville, Maryland, this 2nd day of November, 1995.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27624 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Issuance of Urgent Bulletin; NRC Bulletin 95–02, Unexpected Clogging of a Residual Heat Removal (RHR) Pump Strainer While Operating in Suppression Pool Cooling Mode

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Bulletin 95–02 to request certain remedial actions and associated reporting by holders of boiling water reactor (BWR) licenses and construction permits as a result of the unexpected clogging of a residual heat removal pump strainer at a boiling water reactor facility while operating in the suppression pool cooling mode. This bulletin is available in the NRC Public Document Room under accession number 9510040059. This bulletin was issued as an urgent generic communication under NRC procedures for issues that the staff considers urgent. This bulletin is discussed in Commission information paper SECY–95–255 which is also available in the NRC Public Document Room.

DATES: The bulletin was issued on October 17, 1995.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Robert B. Elliott, (301) 415–1397 or Robert M. Latta, (301) 415–1314.

SUPPLEMENTARY INFORMATION: The NRC issued this bulletin to accomplish the following:

(1) Alert BWR owners to complications experienced during a recent event in which a licensee initiated suppression pool cooling in response to a stuck-open safety relief valve (SRV) and subsequently experienced clogging of one RHR pump suction strainer.

(2) Request BWR owners to review the operability of their emergency core cooling system (ECCS) and other pumps which draw suction from the suppression pool while performing their safety function. The evaluation should be based on suppression pool cleanliness, suction strainer cleanliness, and the effectiveness of foreign material exclusion (FME) practices. In addition, BWR owners are requested to implement appropriate procedural modifications and other actions (e.g., suppression pool cleaning), as necessary, to minimize foreign material in the suppression pool, drywell and containment. BWR owners are requested to verify their operability evaluation through appropriate testing and inspection.

(3) Require that BWR owners report to the NRC whether and to what extent they have complied with the requested actions. In addition, require a second report indicating completion of confirmatory test(s) and inspection(s) and providing the test results by BWR owners that have complied with the requested actions, or indicating completion of any proposed alternative course of action by BWR owners that have not complied with the requested actions.

Dated at Rockville, Maryland, this 2nd day of November, 1995.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Program Management Office of Nuclear Reactor Regulation.

[FR Doc. 95–27625 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is

publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 14, 1995, through October 27, 1995. The last biweekly notice was published on Wednesday, October 25, 1995 (60 FR 54714).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 8, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 2 and 3, Maricopa County, Arizona

Date of amendments request: October 3, 1995

Description of amendments request: The amendment would delete the provisions relating to certain previous sale and leaseback transactions that were by added by Amendment No. 3 for NPF-51 and Amendment No. 1 for NPF-74.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing sale and leaseback transactions. The proposed change does not affect the assumptions used in the accident analyses, nor does the proposed change result in changes to the physical configuration of the facility, design parameters, technical specifications, or operation and maintenance of the facility. Therefore, the amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed because the proposed change is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde Units 2 and 3, specifically authorizing sale and leaseback transitions. The proposed change does not involve modifications to any of the existing equipment nor does the change affect operation or maintenance of the facility. Therefore, the amendment request does not create the possibility of a new or different kind of accident not previously analyzed.

3. The proposed change does not involve a significant reduction in a margin of safety.

This amendment request does not involve a significant reduction in a margin of safety because it is administrative in nature. The proposed change deletes Sections 2.B.(7)(a) and (b) of License No. NPF-51, and Sections 2.B.(6)(a) and (b) of License No. NPF-74. These sections describe the structure of the financing of El Paso's interest in Palo Verde, specifically authorizing the sale and leaseback transactions. The proposed change does not involve changes to any existing plant equipment or accident analyses that provide for or establish margins of safety. There is no change to the operation or maintenance of the facility and the existing margins of safety are not changed by the proposed change. Therefore, the amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendment would revise the Calvert Cliffs Nuclear Power Plant, Unit No. 2, Technical Specifications on a one-time basis by increasing the 7 day allowed outage time (AOT) of the control room emergency ventilation system (CREVS) to an AOT of 30 days. This requested one-time increase in the AOT is applicable only for the loss of the emergency power supply to one train of the CREVS during the Unit No. 1 spring 1996 refueling outage.

The requested extension in the AOT is necessary to allow the licensee to perform modifications to the electrical distribution system during the upcoming Unit 1 refueling outage while Unit No. 2 continues to operate. The modifications include connecting a fourth safety-related (SR) emergency diesel generator (EDG) to engineered safety features (ESF) Bus No. 11. The work related to this effort will require that the bus be deenergized for several days isolating it from its normal and

emergency EDG power supplies. One train of the CREVS is connected to ESF Bus No. 11 and will not have its power supplies available for a period of time. The normal (offsite) power is expected to be restored in about 3 days, but the emergency power (onsite EDG) may take up to 30 days.

The licensee is taking additional actions to assure the availability of the normal offsite power source and is also adding a nonsafety-related (NSR) EDG as an alternate onsite power source during the period that the SR EDG is not available. The licensee expects that the tie-in of the NSR EDG will take about 8 days. Thus, even if the normal offsite power source is lost, the temporary onsite NSR EDG will be available to provide power to the affected train of the CREVS.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Emergency Ventilation System (CREVS) is used to mitigate the consequences of an accident. It is designed so that the Control Room remains habitable for operators and to maintain the environment needed for continued equipment operation. The system is redundant (two 100% capacity trains) and is powered from both normal (offsite) and emergency (emergency diesel generators) power sources. We [the licensee] are proposing an amendment which would allow the emergency power to be removed from one of the redundant CREVS for an additional 23 days (beyond the 7 days allowed by the Technical Specifications). Other than the removal of the emergency electrical power source, we are not affecting or modifying the operation of the CREVS. The CREVS is not an accident initiator for any previously evaluated accident. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The CREVS is designed to mitigate the consequences of design basis accidents. For that purpose, redundant trains are provided to protect against a single failure. During the Technical Specification seven day Allowed Outage Time (AOT), an operating unit is allowed by the Technical Specifications to remove one of the CREVS trains from service, thereby eliminating this single failure protection. The consequences of a design basis accident coincident with a failure of the redundant CREVS train during the additional 23-day period are the same as those during the 7-day AOT. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The CREVS is not being modified by this proposed change nor will any unusual operator actions be required. The system will continue to operate in the same manner. The CREVS is not an initiator to any accident, but is designed to respond should an accident occur.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The operability of the CREVS during Modes 1 through 4 ensures that the Control Room will remain habitable for operators and to maintain the environment needed for continued equipment operation under all plant conditions. The proposed change does not affect the function of the CREVS. During the period of the Technical Specifications AOT when one CREVS train is inoperable, the margin of safety is reduced. This time period is a temporary relaxation of the single failure criteria, which, consistent with overall system reliability considerations, provides a limited time to maintain or repair the equipment and conduct testing. We are requesting an extension of this limited time. The proposed change will allow one train of the CREVS to be without an emergency power supply for an additional 23 days beyond the 7-day AOT (total of 30 days). This train of CREVS will be functional and will have the normal power supply available for all but approximately three days to allow work and necessary testing on the bus. The other train of the CREVS will have both its normal and emergency power supplies during this period.

To provide additional assurance that all reasonable steps have been taken to prevent the loss of the normal power supply to the CREVS, we will restrict maintenance activities on three of the four offsite transmission lines. This restriction will cover the period we are in the Action Statement for the CREVS (Action Statement 3.7.6.1.a and b). To provide an alternative power source during the majority of this period, we will connect the Alternate AC power source (No. 0C Diesel Generator) to ESF Bus No. 11 and confirm its availability as soon as possible after the work on ESF Bus No. 11 begins (we [the licensee] expect that to take about eight days). This power source is independent from the offsite power supplies. In addition, we will restrict planned maintenance on the No. 12 CREVS during the period we are in the Action Statement to ensure that the No. 12 CREVS is not removed from service.

We believe that the reduction in the margin of safety represented by this one-time extension of the AOT is not significant based on our management of plant risk, the reliability of the normal CREVS power supply, the availability of the redundant CREVS with both its normal and emergency power, and the mitigating features described above. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ledyard B. Marsh

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 23, 1995

Description of amendments request: The amendments would delete the applicability of the primary coolant water chemistry limits when the primary system is being chemically decontaminated and the reactor vessel is defueled.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes will allow the reactor coolant system conductivity and chlorides to exceed the limits specified in Technical Specification Table 3.4.4-1 in support of performing chemical decontamination activities. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. Upon concluding the chemical decontamination activities, reactor coolant system conductivity and chloride values would be restored to within the limits specified in Technical Specification Table 3.4.4-1. Existing regulatory requirements, specifically a review in accordance with 10 CFR 50.59 to determine whether an activity involves an unreviewed safety question, provide adequate assurance that solvents selected for use in a chemical decontamination activity will not degrade the structural integrity of the reactor coolant system. Therefore, since the structural integrity of the reactor coolant system will not be adversely impacted by the chemical decontamination activities, the proposed amendments do not involve a significant increase in the probability of an accident previously evaluated.

As discussed above, the reactor coolant system water chemistry limits have been

established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. The solvents being used for a chemical decontamination activity are selected to ensure their effectiveness and to ensure that damage will not occur to the structural materials comprising the reactor coolant pressure boundary. As such, the operation of safety equipment used to mitigate a design basis accident or transient will not be affected by the proposed change of the reactor coolant system water chemistry limits during performance of chemical decontamination activities. Therefore, the proposed revision to the reactor coolant system chemistry limits will not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change will allow the reactor coolant system conductivity and chlorides to exceed the limits specified in Technical Specification Table 3.4.4-1 in order to perform chemical decontamination activities. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. Even though the solvents used for chemical decontaminations may result in reactor coolant system conductivity and chloride measurement values in excess of the limits specified in the Technical Specifications, the existing regulatory requirements of 10 CFR 50.59 will continue to ensure that solvents being used for performing chemical decontamination have been properly evaluated and that these solvents do not adversely affect the material properties or structural integrity of the reactor coolant system. Therefore, the proposed amendments revising the reactor coolant system water chemistry limits during performance of chemical decontamination activities will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The reactor coolant system water chemistry limits have been established to prevent long-term damage to the reactor coolant system materials that are in contact with the coolant. The solvents used for chemical decontaminations result in reactor coolant system conductivity and chloride measurement values in excess of the limits specified in the Technical Specifications; however, the solvents being used of performing chemical decontamination have been properly evaluated to ensure they will not significantly affect the material properties of the reactor coolant system piping (i.e., corrosion) nor will they significantly affect the structural integrity (i.e., wall thinning) of the reactor coolant system piping. Therefore, the proposed license amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: David B. Matthews

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 2, 1994, as supplemented on January 4, 1995

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to make editorial changes, delete portions of the TSs that have become unnecessary due to previously approved amendments, change managerial titles, update references and reporting requirements, revise the Station Nuclear Safety Committee (SNSC) composition to specify disciplines rather than specific job titles, modify the record keeping requirements of the Nuclear Facilities Safety Committee, implement changes referenced in Generic Letter 93-07, ''Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans,'' and to correct the shift manning requirements table.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature. They involve making editorial changes, deleting portions of the Technical Specifications that have become unnecessary due to previously approved amendments, changing managerial titles, updating references and reporting requirements, revising the SNSC composition to specify disciplines rather than specific job titles, implementing changes referenced in Generic Letter 93-07, and revising shift manning to conform with the requirements of 10 CFR 50.54. These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes to the subject Technical Specifications would not increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As stated above, the proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed changes would not initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed changes are administrative in nature. Since there are no changes to the physical design or operation of the facility, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes would not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Ledyard B. Marsh

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 29, 1995

Description of amendment request: The proposed amendment would revise Technical Specification Sections 3.1.F and 4.13 to provide for appropriate inservice inspection for any steam generator tubes containing sleeves and to provide for reduced allowable primary-to-secondary leakage rates for steam generators containing sleeves. The proposed changes are in response to commitments made by Consolidated Edison by letter dated April 5, 1995, during the review of an amendment which permitted the use of laser welded steam generator tube sleeves as a method of tube repair.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Amendment No. 183 allowed sleeving as an acceptable alternate tube repair method for Indian Point Unit No. 2. The steam generator sleeve approved for installation is the Westinghouse process (laser welded sleeve). The sleeve configuration was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and the design requirements of Section III of the American Society of Mechanical Engineers (ASME) Code. Fatigue and stress analyses of the sleeved tube assembly produced acceptable results as documented in the Westinghouse topical report submitted in the original sleeving package. Mechanical testing has shown that the structural strength of the sleeves under normal, faulted, and upset conditions is within acceptable limits. Leakage rate testing for the tube sleeves has demonstrated that primary-to-secondary leakage is not expected during all plant conditions.

Any leakage through the sleeved region of the tube is fully bounded by the leak-before-break considerations and, ultimately, the existing steam generator tube rupture analysis included in the Updated Final Safety Analysis Report (UFSAR).

The reduction in TS leakage rate requirements from 0.3 gpm [gallons per minute] (432 gpd [gallons per day]) allowable per SG to 150 gpd per steam generator containing sleeves further ensures that SG tube integrity is maintained in the event of a main steam line break (MSLB) or under Loss Of Coolant Accident (LOCA) conditions. The RG 1.121 criteria for establishing operational leakage rate limits require a plant shutdown based upon a leak-before-break consideration to detect a free span crack before a potential tube rupture. The 150 gpd limit will continue to allow for early leakage detection and require a plant shutdown in the event of tube leakage that exceeds the revised Technical Specification limit.

The sleeve sample size has been increased to a minimum of twenty (20) percent of the inservice sleeves. Increasing the sample size of the sleeves to be inspected will increase the monitoring of tubes using sleeves for any further degradation while they remain inservice. If the sample identifies a sleeve with an imperfection of greater than 23 percent depth an additional 20 percent of the sleeves shall be inspected. The sleeves that have identified imperfections of greater than 23 percent shall be evaluated and removed from service.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed amendment will not introduce significant or adverse changes to the plant design basis. The proposed changes do not involve plant modification or changes to equipment, and consist of reducing the allowable steam generator leakage limits for steam generators containing sleeves and defining the sample size of the steam generator tube sleeve inspection.

The reduction in TS leakage rate requirements from 0.3 gpm (432 gpd) allowable per SG to 150 gpd per SG containing sleeves further ensures that SG tube integrity is maintained in the event of a MSLB or under LOCA conditions. The 150 gpd limit is designed to provide for leakage detection and a plant shutdown in the event of the concurrence of excessive tube leakage. The limit provides for early detection and a plant shutdown prior to a postulated defect reaching critical magnitudes for Main Steam Line Break conditions.

Formalizing the sample size of sleeved tubes inspected during each scheduled inservice inspection will ensure increased monitoring of these tubes for any further degradation. The improved monitoring and evaluation of the tube and the sleeves assures tube structural integrity is maintained or the tube is removed from service.

With these actions the possibility of a new or different type of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

Implementation of the proposed changes will not reduce the margin of safety. This amendment involves the reduction of sleeved steam generator tube leakage limit and a formalized inservice inspection program for sleeved tubes. These actions will help ensure steam generator tube integrity.

Reduction of the leakage rate requirement from 0.3 gpm (432 gpd) to 150 gallons per day (gpd) per sleeved steam generator will continue to ensure steam generator tube integrity is maintained in the event of main steam line break or under LOCA conditions. Reducing this limit will not result in a reduction in the margin of safety.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary will be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirement of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The sleeve enhances the safety of the plant by increasing the protective boundaries of the steam generator. Keeping the tube in service with the use of a sleeve, instead of plugging the tube and removing it from service, increases the heat transfer efficiency of the steam generator. Monitoring for any increased degradation of a repaired steam generator tube shall be implemented by sampling twenty (20) percent of the sleeves inservice. During each scheduled inservice inspection, any sampled sleeve evaluated and found to have unacceptable degradation shall be removed from service.

Based on the preceding analysis it is concluded that operation of Indian Point Unit No. 2 in accordance with the proposed amendment does not increase the probability of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, nor reduce any margin of plant safety. Therefore, the license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Ledyard B. Marsh

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 30, 1994, as supplemented by letter dated September 19, 1995

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) related to the replacement of the steam generators at McGuire, Units 1 and 2. Currently, the steam generators in place at the McGuire units are Westinghouse Model ''D'' type preheat steam generators. The tube degradation levels in the generators has affected the reliability of the units. Therefore, these generators are scheduled to be replaced with feedring steam generators designed by Babcock and Wilcox International.

In the licensee's September 19, 1995, supplement, proposed changes were made to TS Table 2.2-1, ''Reactor Trip System Instrumentation Trip Setpoints,'' to change the programmed T_{AVG} from 588.2 °F to 585.1 °F. This temperature was chosen based on returning the secondary side steam pressure to the original value after replacement of the steam generators. The licensee stated that 585.1 °F was the assumed value for nominal full power T_{AVG} in all applicable safety analyses related to replacement of the steam generators.

The licensee also requested that the steam line safety valve lift settings in Table 3.7-3, which was requested in the September 30, 1994, application, be withdrawn. The licensee determined that these changes are no longer needed.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated. The low-low steam generator water level reactor trip setpoint, the high-high steam generator water level setpoint for turbine trip and feedwater isolation, and the low-low steam generator water level setpoint for auxiliary feedwater initiation are changing to support operation with the replacement steam generators. These setpoints were chosen both to optimize plant operation, and ensure that all applicable acceptance criteria are met for licensing basis safety analysis. These setpoints do not contribute to the initiation of any accident evaluated in the McGuire FSAR [Final Safety Analysis Report] and have no adverse impact on system operation, therefore it can be concluded that these changes will not significantly increase the probability or consequences of an accident evaluated in the FSAR.

The reduction in the primary to secondary leakage rate for McGuire will not increase the probability of an accident evaluated in the FSAR. This lower limit will require corrective action more quickly than is currently required in the event that there is a steam generator tube leak. This change will not significantly affect the consequences of an accident previously evaluated. The allowable leakage is being lowered because this leakage has a major impact on the results of the offsite dose calculation for the locked rotor, single uncontrolled rod withdrawal, and rod ejection events. The taller tube bundle in the replacement steam generators will potentially result in a longer period of tube bundle uncovery during the above transients. The revised allowable leakages of 0.27 gpm through all steam generators and 135 gallons per day through any one generator ensure that the dose analysis results are within the applicable fraction 10 CFR 100 limits.

The increase in Reactor Coolant System volume due to the replacement steam generators will not increase the probability or consequences of an accident previously evaluated. The increase in volume has no effect on the probability of occurrence of any accident evaluated in the FSAR. The mass and energy release due to postulated loss of coolant accidents inside containment has been analyzed to ensure that the peak containment pressure limit is not exceeded. All Chapter 15 reanalysis which was required due to the replacement steam generators assumed the new Reactor Coolant System volume. Since the results of these analyses show the applicable acceptance criteria continue to be met, it can be concluded that the consequences of an accident previously evaluated are not significantly increased due to this change.

* * * *

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specification will not create the possibility of a new or different accident from any accident previously evaluated. The proposed changes to revise the low-low steam generator water level reactor trip setpoint, high-high steam generator water level setpoint for turbine trip and feedwater isolation, and low-low steam generator water level setpoint for auxiliary feedwater initiation ensure that the appropriate acceptance criteria for FSAR Chapter 15 transients which rely on these functions are met for operation with the replacement steam generators. The proposed change to lower primary to secondary leakage for operation with the replacement steam generators will require that corrective action be taken more quickly in the event that steam generator tube leakage is experienced during operation. As discussed in the technical justification, this will cause the dose results for transients affected by tube bundle uncovery to be within acceptable limits. .... The increase in Reactor Coolant System volume is taken into account in the analysis of the mass and energy release due to a postulated loss of coolant inside containment and Chapter 15 events which have been reanalyzed due to replacement of the steam generators. As discussed above, the proposed changes will not introduce the possibility of a new or different accident from any previously evaluated; they will ensure that transients that take credit for these functions and dose analyses meet applicable acceptance criteria for operation with the replacement steam generators.

Operation of McGuire Nuclear Station in accordance with the proposed changes to the Technical Specifications will not involve a significant reduction in a margin of safety. The proposed changes are being made to ensure that transients that rely on low-low steam generator water level reactor trip setpoint, high-high steam generator water level setpoint for turbine trip and feedwater isolation, and low-low steam generator water level setpoint for auxiliary feedwater actuation meet applicable acceptance criteria. The reduction in allowable primary to secondary leak rate will ensure that transients with dose analyses which are affected by the replacement steam generators meet the current acceptable limits. .... The proposed change in the Reactor Coolant System volume will not involve a significant reduction in a margin of safety. The increased volume affects the mass and energy release due to a postulated loss of coolant accident inside containment and the other Chapter 15 events which were reanalyzed due to replacement of the steam generators. These events have been analyzed and the results are within current acceptable limits. As discussed above, the acceptance criteria for FSAR transients which are affected by these proposed changes continue to be met, therefore there is no significant reduction in the margin of safety.

Changes to the steam generator surveillance requirements will simply delete inspection requirements and repair methods which are no longer applicable after installation of the replacement steam generators. The only exception to this is Surveillance Requirement 4.4.5.4.a.9. This requirement is modified to clarify that the manufacturer will perform the hydrostatic test for the replacement steam generators. This change will not affect the probability or consequences of an accident previously evaluated, the purpose of the preservice inspection is to establish the baseline condition of the tubing. The baseline condition of the tubing in the replacement steam generators will be established prior to installation. The possibility of a new or different accident from any previously evaluated will not be created. No new accident initiation mechanisms will be introduced by this change, and the intent of the requirement, to establish the baseline condition of the tubing, will be met. Since the baseline condition of the tubing will be obtained for use in the monitoring of tubing degradation, as is currently required by the surveillance requirement, there will not be a significant reduction in the margin of safety.

The changes to Technical Specification 6.9.1.9 are administrative in nature. These changes are being made to reflect the most recent revisions of DPC-NE-3002 and DPC-NE-3000, which include changes associated with the replacement steam generators. These topical reports revisions will be reviewed and approved for use regarding Catawba and McGuire Nuclear Stations. Since these changes are administrative in nature, no significant hazards considerations are involved.

Proposed revision to TS Table 2.2-1, Reactor Trip System Instrumentation Trip Setpoints:

proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated. Changing the value for T_{AVG} in Notes 1 and 2 of Table 2.2-1 will update the value to agree with the T_{AVG} assumed in the applicable safety analyses for replacement of the steam generators. Acceptable results were obtained for all required reanalyses. The probability of an accident will not be significantly affected by operation with the new T_{AVG} value, because all equipment will be operated within acceptable design limits. The consequences of previously evaluated accidents which are affected by this change have been evaluated, and have been determined to be within acceptable limits.

This proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. This change does not change the physical configuration of the plant, and all analyses which are affected by replacement of the steam generators have been determined to have acceptable results assuming this value for T_{AVG}.

This proposed change to the Technical Specifications will not involve a significant reduction in the margin of safety. All safety analyses which were affected by replacement of the steam generators assumed this value for T_{AVG} and the results were determined to be within previously acceptable limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: September 4, 1993, as supplemented on February 16, 1994, and August 4, 1995.

Description of amendment request: The proposed amendment would revise the Arkansas Nuclear One Industrial Security Plan.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

The accident mitigation features of the plant are not affected by the proposed compensatory measures for protecting the site during periods when security systems are degraded and therefore no decrease occurs in the effectiveness of the security program to protect against radiological sabotage or increased risk to the public health and safety. This is due to continued compliance with existing regulatory requirements and other commitments within the security plan. These changes have no impact on the design basis security threat and accordingly do not create the possibility of a new or different kind of accident. New systems, modes of equipment operation, failure modes or other plan situations are not introduced by these changes. The proposed changes allow flexibility for the use of compensatory measures and do not change any safety limits, LCOs, or surveillance requirements on equipment to operate the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 24, 1995, as supplemented or supercedes letters dated May 30, and June 20, 1995

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) on containment systems to reflect the adoption of requirements of 10 CFR Part 50, Appendix J, Option B, and implementation of a performance-based containment leak rate testing program at River Bend Station. The licensee letters dated May 20, and June 20, 1995, requested an exemption to Appendix J which subsequently became Option B to the appendix. Those letters were noticed in the Federal Register on July 5, 1995 (60 FR 35079).

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a loss-of coolant accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures which result from any loss-of-coolant accident (LOCA)[LOCA]. The containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design, only the frequency of measuring Type B and C leakage, the proposed change does not directly result in an increase in containment leakage. However, decreasing the test frequency can increase the probability that a large increase in containment leakage could go undetected for an extended period of time. Based upon the results of the periodic containment Type A or Integrated Leak Rate Tests (ILRTs) and Type B and C or Local Leak Rate Tests (LLRTs) surveillance tests, this is not expected during the remaining life of the plant. The risk resulting from the proposed changes is as follows:

Type A Testing

NUREG/CR-4330 (NRC86) found that the effect of containment leakage on overall accident risk is small since risk is dominated by accident sequences that result in failure or bypass of the containment. It also determined that on an expected individual dose basis, the effect of containment leakage is small.

Industry wide, ILRTs have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only about two times the allowable leakage rate.

NUREG-1493 found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that reducing the Type A leakage test frequency would have a minimal impact on public risk.

Type B and C Testing

NUREG-1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts. The risk model used in NUREG-1493 suggests hat the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. NUREG-1493 found that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite [off-site] dose consequences, the actual increase in on-site (worker) doses exceeded (by at least an order of magnitude) the potential off-site dose consequences.

EPRI Research Project Report TR-104285, ''Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals,'' also concluded that a relaxation of the test intervals for Type B and C penetrations results in a negligible increase in total plant risk.

Based on the above EOI [Entergy Operation, Inc.] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The request does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change involves the reduction in Type B and C test frequency. The methods of performing the tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending

the test frequency has no influence on , nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

3. The request does not involve a significant reduction in a margin to safety.

The proposed change only affects the frequency of Type A, B, and C testing and does not change the methodology for performance of the testing. However, the proposed change can increase the probability that a large increase in leakage could go undetected for an extended period of time. Operational experience has shown that the leak tightness of the containment has been maintained significantly below the allowable leakage limit. In addition, NUREG-1493 has determined that, under several different accident scenarios, the risk of radioactivity release from containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite [off-site] dose consequences of postulated accidents which are directly related to containment leakage rate. The containment isolation system is designed to limit leakage to L_a which is defined by the RBS Technical Specifications to be 0.26 percent by weight of the containment air per 24 hours at 7.6 psig (P_a). The limitation on containment leakage rate is designed to ensure that total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a) or 7.6 psig. The margin to safety for the offsite [off-site] dose consequences of postulated accidents directly related to the containment leakage rate in maintained by meeting the 1.0 L_a

No change in the method of testing is being proposed. The Type B and C tests will continue to be done at full pressure (P_a) or greater. Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

As a result, EOI had concluded that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: William D. Beckner

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 28, 1995

Description of amendment request: The proposed change modifies Technical Specification 3/4.8.1.2, ''Electrical Power Sources - Shutdown.'' The surveillance requirement 4.8.1.2 is clarified by a Note to identify those surveillances which are required to be performed during Modes 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No component modification, system realignment, or change in operations will occur which could affect the probability of any accident or transient. The proposed addition of a Note will provide guidance on which surveillances are required to be performed in Modes 5 and 6. The Note will preclude rendering operable DGs inoperable, and/or preclude de-energizing a required ESF bus or disconnecting a required offsite circuit during the performance of the surveillance requirement. Proposed changes do not eliminate any testing requirements, they simply clarify which tests will be performed in Modes 5 and 6, and which are required to be performed prior to entry into Mode 4. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

No component modification, system realignment, or change in operating procedure is required to implement the proposed change. The proposed change reduces the possibility of a single event impacting the operability of an ESF bus or its DG simultaneously. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed change will not alter any assumptions, initial conditions, or results of any accident analyses. The Class 1E equipment assumed available in the accident analyses and their designed capability to mitigate the consequences of any postulated accidents will not be changed. The addition of a Note to clarify the surveillance requirements will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 28, 1995

Description of amendment request: The proposed changes relocate ''Reactor Coolant System - Chemistry'' Technical Specification 3/4.4.7 (Salem Unit 1) and 3/4.4.8 (Salem Unit 2) and their associated Bases to the Salem Updated Final Safety Analysis Report (UFSAR) and the Surveillance Requirements and Limiting Conditions for Operation to applicable plant procedures controlled by the 10 CFR 50.59 process. Also, the applicability will be changed from ''At all times'' to ''Modes 1, 2, 3, 4, 5 and 6.''

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware changes, no changes to the operation of any systems or components, and no changes to existing structures. Specifically, changing the Applicability from ''At all times'' to ''Modes 1, 2, 3, 4, 5 and 6'' by this submittal will not alter established chemistry for chlorides, fluorides and dissolved oxygen of the Reactor Coolant System. The relocation of this Surveillance Requirement/LCOs and Bases to plant procedures and the UFSAR respectively, will continue to ensure that the chemistry analysis of the Reactor Coolant System water is monitored and controlled. Changing the Applicability from ''At all times'' to ''Modes 1,2,3,4,5 and 6'' represent changes that do not affect plant safety and do not alter existing accident analyses.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are procedural in nature concerning the location of the descriptive information and surveillance requirements for Reactor Coolant System Chemistry. Removing these specifications from the Technical Specifications and

placing them in the UFSAR and plant procedures will not alter the maintenance of the Reactor Coolant System Chemistry or the ability to monitor its intended functions. Therefore, these changes will not create a new or unevaluated accident or operating condition.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes relocate the Reactor Coolant System Chemistry Requirements/ LCOs from the Technical Specifications to the UFSAR and plant procedures in accordance with guidance provided by the NRC Final Policy Statement (58 FR 39132) regarding the improvement of Technical Specifications. The requirements that will reside in the UFSAR and plant procedures for the Reactor Coolant System Chemistry will ensure that the ability to determine chloride, fluoride and dissolved oxygen concentrations in the Reactor Coolant System is properly maintained and that the maintenance of the Reactor Coolant System Chemistry will be commensurate with its safety significance. Therefore, the proposed changes will not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 26, 1995

Description of amendments request: The amendments would revise Technical Specification (TS) Section 4.6.1.3 to incorporate improvements to containment air lock testing referenced in Chapter 3.6, ''Containment Systems,'' of NUREG-1431, ''Standard Technical Specifications, WestinghousePlants.''

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Containment leakage is an assumption in the safety analysis of the loss of coolant accident and the rod ejection accident. Changes to the containment air lock door seal test acceptance criteria will have no impact on the radiological consequences of these accidents since the plant safety analysis is based on the assumption that the containment leaks at its design leak rate of 0.15 percent per day for the first 24 hours and 0.075 percent per day thereafter for each of these accidents. The change to the surveillance requirement meets the intent of the guidance in NUREG-1431. Primary containment integrity ensures that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analysis. The limitations on closure and leak rate for the containment air locks are required to meet these restrictions on containment integrity. These changes do not increase the probability that the 10 CFR [Part] 100 limits will be exceeded. The change to the surveillance requirement does not impose any new safety analyses limits or alter the plants ability to detect and mitigate events. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change involves a revision to the Technical Specifications to meet the intent of the guidance of NUREG-1431, and does not necessitate a physical alteration of the plant or change in parameters governing normal plant operation. The change has not effect on the plant's compliance with the requirements of Appendix J. The revision of the acceptance criteria for the air lock door seal test will improve the FNP [Farley Nuclear Plant] current testing criteria while maintaining an acceptable level of safety. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety. The revision of the acceptance criteria of the air lock door seal test will decrease the overall test burden without decreasing the margin of safety. The overall leakage rate of the air lock continues as less than or equal to $0.05L_a$ and the plant safety analysis continues to be based ont he assumption that the containment leaks at its design leak rate of 0.15 percent per day for the first 24 hours and 0.075 percent per day thereafter for each of these accidents. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would clarify the limiting condition for operation for TS 3.8.1.1 and 3.8.1.2 from ''independent'' circuit to ''qualified'' circuit; explain in the Bases the requirements for operability of an offsite circuit; delete the STAGGERED TEST BASIS scheduling requirement to perform emergency diesel generatorsurveillances; explain in the Bases an acceptable method for verification of Emergency Diesel Generator speed for surveillance requirements (SR) 4.8.1.1.2.a.4 and 4.8.1.1.2.c.4; remove a surveillance test extension that has expired for SR 4.8.1.1.1.b; add an exception for SR 4.8.1.1.2.c.5 and 4.8.1.1.2.c.7 to SR 4.8.1.2; and revise Bases 3.0.5 to reflect the clarification from ''independent'' circuit to ''qualified'' circuit.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation ofthe Davis-Besse Nuclear Power Station, Unit No. 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not make a change to any accident initiator, initiating condition or assumption. The proposed changes do not involve a significant change to the plant design or operation. The proposed changes do not affect the safety function of the offsite circuits or the emergency diesel generators (EDGs).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of

an accident, do not alter the source term or containment isolation and do not provide a new radiation release path or alter potential radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes do not reduce the margin to safety which exists in the present Technical Specifications [TS] or Updated Safety Analysis Report. The operability requirements of the TS are consistent with the initial condition assumptions of the safety analyses. Further, the proposed changes do not affect the Action statement requirements for the various levels of degradation in the offsite [power] circuits or EDGs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 29, 1995

Description of amendment request: The proposed amendment would increase the minimum available borated water volume requirement for the boric acid addition system, the minimum and maximum boron concentration requirements for the borated water storage tank, the minimum boron concentration requirement for the core flood tanks; modify the surveillance requirements for trisodium phosphate dodecahydrate; and modify the refueling boron concentration and the associated Action statement. These proposed changes will affect the following Technical Specification sections: 3/4.1.2.8, Reactivity Control Systems - Borated Water Sources - Shutdown; 3/4.1.2.9, Reactivity Control Systems - Operating; 3/4.5.1, Emergency Core Cooling Systems (ECCS) - Core Flooding Tanks; 3/4.5.2, Emergency Core Cooling Systems - ECCS Subsystems - Tavg [plus or minus] 280 °F; 3/4.5.4, ECCS - Borated Water Storage Tank; 3/4.9.1, Refueling Operations - Boron Concentration; Bases 3/4.1.2, Boration Systems; Bases 3/4.5.2 and 3/4.5.3, ECCS Subsystems; and Bases 3/4.9.1 Boron Concentration.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are significantly affected by the proposed changes.

The proposed changes to the Technical Specifications and their Bases increase the minimum volume of the Boric Acid Addition System (BAAS), the minimum boron concentration of the Borated Water Storage Tank (BWST) and Core Flooding Tanks (CFTs), the maximum boron concentration of the BWST, and the minimum volume of trisodium phosphate dodecahydrate (TSP) in Containment (CTMT). Administrative changes to these Technical Specifications have also been proposed. These changes ensure adequate boration capability is maintained for normal operations, that adequate Shutdown Margin (SDM) can be achieved following an accident, and that the assumed post-Loss of Coolant Accident (LOCA) pH can be achieved. Therefore, as stated above, these proposed changes do not significantly affect accident initiators, conditions, or assumptions.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not change the source term, CTMT isolation, or allowable releases.

In particular, maintaining the appropriate amount of TSP will ensure the assumed pH will be achieved, the assumption of source term with respect to iodine retention will be maintained, and the radiological consequences of a previously evaluated accident will not be increased.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes.

These changes ensure that the assumptions used for initial and final conditions of SDM, pH, and source term are maintained. Also, the Environmental Qualification (EQ) and seismic requirements have been verified to be adequate to maintain the adequacy of Structures, Systems, and Components (SSCs) during assumed accident conditions.

3. Not involve a significant reduction in a margin of safety because the proposed changes to the minimum volume and boron concentration for the BAAS, BWST, and CFTs ensure that the margin of safety for reactor subcriticality is maintained at all times for future longer fuel cycles, including the upcoming Cycle 11.

The proposed increase in the BWST maximum boron concentration is set at the conservative limit for post-LOCA boron precipitation concerns. Therefore, the existing margin of safety with respect to post-LOCA boron precipitation is maintained.

The proposed increase in the minimum TSP volume requirement maintains the same margin of safety with respect to post-LOCA pH, time for dissolution, iodine retention, and chloride stress corrosion of austenitic stainless steels. The TSP capacity margin of approximately 40 cubic feet included in the minimum TSP volume requirement will not result in increasing the pH above the previously approved pH limit of 11. This reserve capacity adds margin to ensure adequate minimum pH is achieved.

The proposed removal of the 1800 ppm refueling boron concentration requirement does not reduce the margin of safety because the requirement of maintaining keff [less than or equal to] 0.95 is alone sufficient to ensure that the accident analysis assumptions are satisfied.

The proposed change to the boration rate requirement of the

LCO 3.9.1 Action statement does not reduce the margin of safety because the proposed boration rate of 12 gpm of 7875 ppm boric acid solution is equivalent to the present boration rate of

10 gpm of 8750 ppm boric acid solution.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 5.0, ''Design Features,'' by adding a site location description, remove site area

maps, remove containment and reactor coolant system design parameters, remove the description of the meteorological tower location, remove component cyclic or transient limits, and revise the fuel assembly description to include the use of ZIRLO clad fuel rods.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Section 5.0, Design Features, of the Technical Specifications. These changes are proposed to add a site location description, remove site area maps, remove containment and reactor coolant system design parameters, remove the description of the meteorological tower location, remove component cyclic or transient limits, and revise the fuel assembly description to include the use of ZIRLO clad fuel rods.

Under the proposed changes, Technical Specifications (TS) Section 5.0 would continue to satisfy the applicable requirements of Section 182.a of the Atomic energy Act of 1954, and 10 CFR 50.36(c)(4). Further, the proposed changes are consistent with NUREG-1430, ''Standard Technical Specifications for Babcock and Wilcox Plants,'' Revision 1. The information proposed for removal from existing TS 5.0 is presently included in the Updated Safety Analysis Report (USAR) or is being proposed to be added to the USAR, hence sufficient controls exist under 10 CFR 50.59 to ensure that future changes to these items are acceptable.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are consistent with the ''Standard Technical specifications for Babcock and Wilcox Plants'' (NUREG-1430) and are administrative changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve only administrative controls. As described above, these changes are consistent with the ''Standard Technical Specifications for Babcock and Wilcox Plants'' (NUREG-1430) and are administrative changes. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative and do not reduce or adversely affect the capabilities of any plant structure, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 6, 1995

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.3.1 to reflect a change in the maximum initial enrichment for reload fuel. The amendment would also change the maximum reference $K_{infinity}$ for storage in Region 1 of the spent fuel pool and TS Figure 3.9-1 to reflect a change in the maximum initial enrichment for storage in Region 2.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

An increase to a maximum initial enrichment of 5.0 w/o U-235 does not involve an increase in the probability or consequence of an accident or other adverse condition over previous evaluations. Because of the conservative techniques and assumptions used to evaluate the maximum possible neutron multiplication factor, there is reasonable assurance that criticality safety is maintained when storing fuel assemblies of up to and including 5.0 w/o U-235 in the spent fuel storage racks under both normal and postulated accident conditions. For example, the calculations for non-accident conditions ignore the 2000 ppm soluble boron in the spent fuel pool calculations, thus resulting in conservative values of the multiplication factor. Storing fuel in the Region 1 configuration which meets the IFBA [integral fuel burnable absorber] versus enrichment curve (Figure 3 of Attachment 6) results in a maximum multiplication factor of 0.9481, including all biases and uncertainties.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

An increase to a maximum initial enrichment level of 5.0 w/o U-235 does not create the possibility of a new or different kind of accident or condition over previous evaluations. An increase to the enrichment level of 5.0 w/o U-235 involved performing extensive evaluations to develop the IFBA versus enrichment curve for V-5 fuel. Use of dual code packages ensures that the spent fuel pool Region 1 criticality limits are not exceeded.

3. The proposed changes do not involve a significant reduction in the margin of safety.

An increase in the maximum initial enrichment level to 5.0 w/o U-235 does not involve a reduction in the margin of safety. As discussed above, in all cases the multiplication factors for worst case assumptions fall considerably below the criticality limits and do not represent any reductions in margin. An increase to the initial enrichment level of 5.0 w/o U-235 does not adversely impact operation of the various plant systems, i.e. HVAC [heating, ventilation, and air conditioning], spent fuel pool cooling, or radiological control systems.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: William H. Bateman

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 6, 1995

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 4.2.b, ''Steam Generator Tubes,'' its associated bases, and Figure TS 4.2-1 by redefining the pressure boundary for Westinghouse mechanical hybrid expansion joint (HEJ) steam generator (SG) tube sleeves.

Basis for proposed no significant hazards consideration determination: As required by 10CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist.

1. Operation of the KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Mechanical testing has shown that the inherent structural strength of the HEJ joint provides sufficient integrity such that the tube rupture capability recommendations of RG [Regulatory Guide] 1.121 are met, even for instances of 100 percent throughwall, 360° circumferentially oriented degradation in the HEJ HRLT [hardroll lower transition] region. Structural integrity recommendations consistent with RG 1.121 are supplied

for all tube degradation 1.1 inch or greater below the bottom of the HEJ HRUT [hardroll upper transition]. Based on test data, a bounding SLB [steam line break] leak rate of 0.033 gpm for indications between 1.1 and 1.3 inch below the bottom of the HRUT is applied. As the leakage data base is expanded and statistical basis established, this SLB leakage allowance may be reduced. For indications existing greater than 1.3 inch below the bottom of the HRUT, SLB event leakage can be neglected.

Additional prevention from tube rupture is inherently provided by the HEJ geometry. For RCS [reactor coolant system] release rates to exceed the normal makeup capacity of the plant, the tube must be postulated to experience a complete circumferential separation at the lower transition, and become axially displaced by 3 to 3.25 inches, resulting in complete geometric disassociation between the tube and sleeve resulting in sufficient flow area to support leakage in excess of makeup capacity. During the 1989 plug top release event at North Anna Unit 1, primary to secondary release rates were calculated to be less than 80 gpm, for a flow area approximately four times larger than the flow area created by a tube which was axially displaced by about 1.25 to 1.5 inch. Analysis of the steam generator indicates that at a 95 percent cumulative probability, the tube would experience an axial displacement of less than the 1.1 inch boundary. At this level of axial displacement, a ring of metal to metal contact would remain between the tube and sleeve, and leakage would be far less than makeup. Projected leakage at this point is expected to be less than 2.5 gpm. Therefore, implementation of the proposed repair boundary will not result in tube rupture, even for a tube postulated to not behave as predicted by the available test and pulled tube data.

The proposed technical specification change to support the implementation of the HEJ sleeve tube pressure boundary for parent tube degradation in the HEJ HRLT region does not adversely impact any other previously evaluated design basis accident or the results of accident analyses for the current technical specification minimum reactor coolant system flow rate. Plugging limit criteria are established using the guidance of RG 1.121. Furthermore, per RG 1.83 recommendations, the sleeved tube assembly can be monitored through periodic inspections with present eddy current techniques.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the revised pressure boundary will not introduce significant or adverse changes to the plant design basis. Mechanical testing of degraded sleeve joints supports the conclusions of the calculations that the sleeve retains structural (tube burst) capability consistent with RG 1.121. As with initial installation of sleeves, implementation of the relocated pressure boundary cannot interact with other portions of the RCS. Any hypothetical accident as a result of potential tube degradation in the HEJ HRLT region of the tube is bounded by the existing tube rupture accident analysis. Neither the sleeve design nor implementation of the tube repair boundary defined on Figure TS 4.2-1 affects any other component or location of the tube outside of the immediate area repaired.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The safety factors used in the establishment of the HEJ sleeved tube pressure boundary are consistent with the safety factors in the ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel Code used in steam generator design. Based on the sleeved tube geometry, it is unrealistic to consider that application of the revised pressure boundary could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The pressure boundary established ... has been developed using the methodology of RG 1.121. The performance characteristics of postulated degraded parent tubes of HEJ tube/sleeve joints have been verified by testing to retain structural integrity and preclude significant leakage during normal and postulated accident conditions. Testing indicates that postulated circumferentially separated tubes which the repair boundary addresses would not experience axial displacement during either normal operation or SLB conditions. The existing offsite dose evaluation performed for KNPP in support of the voltage based plugging criteria for axial ODSCC [outside diameter stress corrosion cracking] at TSP [tube support plate] intersections established a faulted loop primary to secondary leak rate of 34.0 gpm using technical specification dose equivalent Iodine-131 activity levels. Following implementation of the criteria, postulated leakage from all sources must not exceed 34.0 gpm in the faulted loop. Maintenance of this limit will ensure that offsite doses would not exceed the currently accepted limit of a small fraction of the 10 CFR 100 guidelines. The repair boundary uses a conservatively established ''per indication'' leak rate for estimation of SLB leakage. This leak rate is applied to all indications left in service as a result of the tube repair boundary, including non-throughwall indications and a limited number of indications of circumferential throughwall extent.

For a postulated indication whose performance is not characteristic of the test and pulled tube data, and which would experience axial displacement at the 95 percent cumulative probability value following a postulated SLB event with no operator intervention, leakage would not be expected to result in an uncontrolled release of reactor coolant in excess of normal makeup capacity.

For the three removed tube sleeve samples and nearly 1,000 PTIs [parent tube indications] detected in the field, there were no instances of degradation of elevations (multiple expansion transitions) on either side of the hardroll expansion in the same tube. This includes no instances on non-detected degradation in the upper hydraulic and hardroll upper expansion transitions for the removed tubes. One tube was identified in the most recent KNPP inspection with two separate circumferential crack elevations within the HRLT. Rapidly occurring degradation would not be expected at the upper transitions, based partly on the field inspection results. The available inspection results include two inspection programs (1994 and 1995) at Kewaunee and one at Point Beach Unit 2 (1994). Through these three inspection programs, approximately 11,000 HEJ sleeved tubes have been inspected using advanced ET [eddy current testing] techniques.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments

issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: October 6, 1995

Description of amendment request: Revise the Technical Specifications to change the definition of the F* distance.

Date of publication of individual notice in Federal Register: October 16, 1995 (60 FR 53648)

Expiration date of individual notice notice: November 15, 1995

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendment: September 13, 1995, as supplemented by letter dated October 19, 1995

Brief description of amendment request: The proposed amendments would revise Technical Specification (TS) Section 15.1, ''Definitions,'' the basis for TS Section 15.3.1.G, ''Operational Limitations,'' and TS Figure 15.2.1-2, ''Reactor Core Safety Limits, Point Beach Unit 2.'' The proposed changes would reduce the reactor coolant system raw measured total flow rate limit and reflect new reactor core safety limits for Unit 2.Date of individual notice in Federal Register: October 24, 1995 (60 FR 54527)

Expiration date of individual notice notice: November 8, 1995

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 6, 1995

Brief description of amendments: The amendments extend the nominal surveillance interval requirements of selected safety systems instruments form 18 months to a refueling interval of 24 months.

Date of issuance: October 19, 1995

Effective date: As of the date of issuance to be implemented within 30 days for Unit 2 and prior to restart of the spring 1996 refueling outage for Unit 1.

Amendment Nos.: 208 and 186

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35061) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 19, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois Docket Nos. 50-10, 50-237 and 50-249, Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: April 24, 1995, as supplemented August 1 and September 14, 1995.

Brief description of amendments: The amendments would relocate the requirements for the ''Review, Investigative and Audit Functions'' and frequencies of the quality assurance (QA) program from the administrative controls section of the TS to the appropriate sections of the licensee's Quality Assurance Topical Report (QATR), CE-1-A, Revision 65. In addition, the proposed TS changes include title changes to reflect the reorganization of the licensee's Nuclear Operations Division and miscellaneous administrative and editorial changes.

Date of issuance: October 20, 1995

Effective date: October 20, 1995

Amendment Nos.: 75, 75, 67, 67, 38, 141, 135, 107, 93, 163, 159, 171, and 158

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, NPF-77, DPR-2, DPR-19, DPR-25, NPF-11 NPF-18, DPR-29, DPR-30, DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 30, 1995 (60 FR 45175) and September 20, 1995 (60 FR 48726). The August 1 and September 14, 1995, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original Federal Register notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Dresden, Morris Area Public Library District, 604

Liberty Street, Morris, Illinois 60450; for LaSalle, Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; and for Zion, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: June 30, 1995

Brief description of amendments: The amendments modify the surveillance requirements for the emergency diesel generators.

Date of issuance: October 16, 1995

Effective date: October 16, 1995

Amendment Nos.: 170 and 157

Facility Operating License Nos. DPR-39 and DPR-48: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47615) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995

Brief description of amendment: The amendment deletes requirements associated with part length control element assemblies.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment No.: 169

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37090) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: March 17, 1995

Brief description of amendment: The amendment deletes requirements associated with surveillance to verify position stops for High Pressure Safety Injection Emergency Core Cooling System throttle valves.

Date of issuance: October 18, 1995

Effective date: October 18, 1995

Amendment No.: 170

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37089) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 4, 1995, as supplemented by letter dated October 12, 1995

Brief description of amendment: The amendment revises the containment cooling response time to reduce the likelihood of a water hammer event in service water piping.

Date of issuance: October 26, 1995

Effective date: October 26, 1995

Amendment No.: 171

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 19, 1995 (60 FR 37090) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 28, 1994

Brief description of amendments: The amendments delete the minimum frequency criteria prescribed for quality assurance audits from Administrative Controls sections 6.5.2.8 and 6.8.4 of the Technical Specifications (TS). Audit periodicity will thereby be controlled by the program described in the Florida Power and Light Company (FPL) Topical Quality Assurance Report.

Date of issuance: October 25, 1995

Date of issuance: October 25, 1995

Effective date: October 25, 1995

Amendment Nos.: 140 and 80

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995

Brief description of amendments: These amendments consist of administrative corrections and clarifications.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment Nos. 177 and 171Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47619) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995

Brief description of amendments: These amendments consist of administrative corrections and clarifications.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment Nos.: 178 and 172Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47619) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: February 13, 1995, as supplemented April 21, 1995, and August 7, 1995.

Brief description of amendment: The proposed amendment deletes the audit requirements from the Duane Arnold Energy Center Technical Specifications (TS) and adds them to the Quality Assurance Program.

Date of issuance: October 17, 1995

Effective date: October 17, 1995

Amendment No.: 213

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16190) The additional information contained in the supplemental letters dated April 21, 1995, and August 7, 1995, was clarifying in nature and did not change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 31, 1995

Brief description of amendments: The amendments revise Technical Specification (TS) surveillance requirements for safety-related pump testing to eliminate recirculation alignments. In addition, specific test parameters, discharge pressures, and flows associated with these pumps are removed from the TS and will be controlled by the Inservice Testing Program.

Date of issuance: October 17, 1995

Effective date: October 17, 1995, with full implementation within 45 days

Amendment Nos.: 203 and 188

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32368) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: February 1, 1995

Brief description of amendment: The amendment revises Technical Specification 3.6.13 and associated Bases to permit the controls and instruments from both Remote Shutdown Panels to be considered when assuring that one complete set of controls and instruments is operable. The changes also allow 30 days to restore an inoperable function to operable status, remove MODE 3 (hot shutdown) from the existing requirement for operability, and revise the LIMITING CONDITION FOR OPERATION ACTION to require achieving hot shutdown in 12 hours instead of cold shutdown in 36 hours. An additional change permits the operator 30 days to establish an alternate method of monitoring a parameter (and 90 days to restore the function) when the function is inoperable.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 155

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 1, 1995 (60 FR 11135) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 29, 1995

Brief description of amendment: The amendment modifies the current Technical Specifications that have cycle-specific parameter limits in the Core Operating Limits Report to include an additional cycle-specific parameter and its supporting methodologies.

Date of issuance: October 18, 1995

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 120

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1995 (60 FR 24912) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: September 1, 1995

Brief description of amendment: The amendment deleted License Condition 2.C.(5) which restricts power levels to no less than seventy percent in the coastdown condition.

Date of issuance: October 17, 1995

Effective date: As of date of issuance

Amendment No.: 215

Facility Operating License No. (DPR-56): This amendment revised the Facility Operating License. Public comments requested as to proposed no significant hazards consideration: Yes. (60 FR 48530). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 18, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 17, 1995.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. Vice President and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education

Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 19, 1995

Brief description of amendments: The amendments revise the Technical Specifications Table 3.3.3-3, ''Emergency Core Cooling System Response Times'' to reflect the value of 60 seconds for the High Pressure Coolant Injection system response time instead of 30 seconds as previously specified.

Date of issuance: October 16, 1995

Effective date: For both units, as of the date of issuance and to be implemented within 30 days.

Amendment Nos.: 102 and 66

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 5, 1995 (60 FR 35084) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 21, 1995

Brief description of amendment: The amendment revises TS Section 6.0 (Administrative Controls) to replace the title-specific list of members on the Plant Operating Review Committee with a more general statement of membership requirements, and expands the scope of disciplines represented on the committee to include Nuclear Licensing and Quality Assurance. The amendment also changes the following management position titles: ''First Executive Vice President and Chief Nuclear Officer'' to ''Chief Nuclear Officer'', ''Resident Manager'' to ''Site Executive Officer'', ''Shift Supervisor'' to ''Shift Manager'', and ''Assistant Shift Supervisor'' to ''Control Room Supervisor.'' These changes in title do not affect the reporting relationships, authority, or responsibilities of these positions. Finally, the amendment also makes editorial corrections to the TSs.

Date of issuance: October 13, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 228

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47624) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 12, 1995.

Brief description of amendment: The amendment extends the surveillance test intervals for the nuclear steam supply system to support 24-month operating cycles. Surveillance test interval extensions that are justified will be denoted as being performed ''every 24 months'' or ''at least once per 24 months'' consistent with the guidance provided in Reference 1. Other surveillances currently performed ''once each operating cycle,'' ''at least once during each operating cycle,'' ''each refueling,'' or similar notation, that are not being extended at this time will be denoted as being performed ''at least once per 18 months.'' The NRC staff has determined that the proposed TS changes follow the guidance of Generic Letter 91-04, and are therefore acceptable.

Date of issuance: October 13, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 229

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1995 (60 FR 24916) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 18, 1995

Brief description of amendment: This amendment changes Technical Specification Table 4.3.7.1-1, ''Radiation Monitoring Instrumentation Surveillance Requirements,'' to increase the channel functional test interval from monthly to quarterly for each instrument.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 83

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 16, 1995 (60 FR 42607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 4, 1995

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.6.1.8, ''Drywell and Suppression Chamber Purge System,'' increasing the annual operational limit for the drywell and suppression chamber purge system from 120 to 500 hours.

Date of issuance: October 16, 1995

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 84

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 16, 1995 (60 FR 42607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of applications for amendment: November 30, 1994 and March 30, 1995, as supplemented by letter dated September 5, 1995.

Brief description of amendment: The change to TS Table 3.3.1-2, ''Reactor Protection System Response Times,'' TS Table 3.3.2-3, ''Isolation System Instrumentation Response Time,'' TS Table 3.3.3-3, ''Emergency Core Cooling System Response Times,'' and associated Bases, eliminates the requirement to perform response time testing for certain classes of equipment and transfers the requirements of the above-referenced TS Tables to the Updated Final Safety Analysis Report.

Date of issuance: October 24,1995

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 85

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 29, 1995 (60 FR 16198 and August 16, 1995 (60 FR 42606) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1995. No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: May 20, 1994, as supplemented on March 29, 1995

Brief description of amendment: The amendment revises Technical Specifications to implement the NRC's Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactor by relocating specifications that do not meet policy statement criteria to the Final Safety Analysis Report.

Date of issuance: October 20, 1995

Effective date: Immediately, to be implemented within 120 days.

Amendment No.: 103

Facility Operating License No. NPF-30. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 31, 1994 (59 FR 45036). The March 29, 1995, letter provided supplemental information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original Federal Register notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 26, 1994, as supplemented by letters dated December 1, 1994, and June 23, 1995

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.0, ''General Considerations.'' This section specifies the actions to be taken for conditions not directly addressed in the action statements fo the TSs. In addition, changes to the applicable bases (including the bases for TS 15.3.3) and editorial changes are also included.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment Nos.: 163 and 167

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 16, 1994 (59 FR 12373) The December 1, 1994 and June 23, 1995, submittals provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 17, 1995

Brief description of amendments: These amendments change TS Sections 15.6.2, ''Organization,'' and 15.6.3, ''Facility Staff Qualifications.'' The requirement for the Operations Manager to hold an NRC Senior Reactor Operator's (SRO) license has been changed to provide additional staffing flexibility.

Date of issuance: October 12, 1995

Effective date: October 12, 1995

Amendment Nos.: 164 and 168

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1995 (60 FR 27346). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Dated at Rockville, Maryland, this 1st day of November 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/IV,Office of Nuclear Reactor Regulation

[Doc. 95–27543 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–F

[Docket Nos. 50–390 and 50–391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Supplement Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published the Safety Evaluation Report, Supplement 18 (NUREG–0847, Supp. 18) related to the operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50–390 and 50–391.

Copies of the report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and in the Local Public Document Room, Chattanooga-Hamilton Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. GPO deposit account holders may charge orders by calling 202–512–2249 or 2171. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland this 31st day of October 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II Office of Nuclear Regulatory Commission.

[FR Doc. 95–27626 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8838]

Jefferson Proving Ground, Madison, IN; Consideration of an Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Consideration of an Amendment Request for Release of the Remediated Portion of Jefferson Proving Ground (JPG), Madison, IN, for Unrestricted Use and Amendment of the U.S. Army Source Material License Number SUB–1435, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission is considering two license amendment requests for Source Material License SUB–1435, issued to the U.S. Army, Jefferson Proving Ground (JPG), Madison, IN. The first amendment would release, for unrestricted use, a portion of JPG. The second amendment would transfer the license from the U.S. Army at JPG to the U.S. Army Test and Evaluation Command (TECOM), Aberdeen, MD.

The first amendment request involves that portion of JPG which has been remediated to levels in compliance with the current NRC decommissioning criteria for unrestricted release (i.e., ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material,'' August 1987). This portion of the JPG site is located south of the firing line. In a letter dated September 14, 1995, the licensee requested amendment of its license to release the area south of the firing line for unrestricted use. In support of this request, the licensee remediated the area south of the firing line and submitted a final survey report. In addition, the Army has submitted a certificate of disposition which indicated that the depleted uranium (DU) material, that resulted from the remediation activities, was disposed of at a licensed burial site. Subsequently, the NRC conducted a confirmatory radiological survey of that area and submitted the results of that survey to the Army on September 27, 1995 (Report No. 040–08838/95001/R–III). The radiological survey data in these two reports (final and confirmatory survey reports) did not identify any radioactive material in excess of the current NRC decommissioning criteria for unrestricted use. Therefore, in accordance with NRC regulations in 10 CFR 40.41, and NRC's Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites (57 FR 13389, April 16, 1992), that portion of JPG site would be released for unrestricted use.

The second amendment request involves the transfer of the license. The U.S. Army has ceased its function as a test center for DU projectiles and has closed JPG effective September 30, 1995. The Army has transferred certain DU material to other Army locations under different licenses. Therefore, the Army currently possesses only the DU material remaining onsite (estimated 80,000 kilograms), in the DU impact area north of the firing line, and will not conduct any further DU test activities at JPG. As a result of these changes, the Army has requested (in a letter dated September 14, 1995) an amendment to transfer the license to the U.S. Army TECOM Headquarters in Aberdeen, MD. Consequently, NRC is considering the Army's request to amend the license to conform with the current conditions and status at JPG. In addition, NRC is proceeding with the development of an environmental impact statement (EIS) which will examine alternatives for the decommissioning of the remaining radiologically contaminated portion of JPG (i.e., the DU impact area north of the firing line). A notice of intent to develop an EIS was published in the Federal Register on April 10, 1995 (60 FR 18155).

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings, of NRC's rules and practices for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for hearing must be filed within (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Test and Evaluation Command, Aberdeen Proving Ground, Maryland 21005–5055, ATTN: Ms. Tanya Palmateer Oxenberg, and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

For further details with respect to this action, the application for the license amendment is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555. If you have any questions or comments about the requests, please contact NRC's project manager for the site, Dr. Boby Eid, at telephone number (301) 415–5811 or at Mail Stop T7F27, U.S. NRC, Washington, DC 20555.

Dated at Rockville, Maryland this 31st day of October 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.

[FR Doc. 95–27623 Filed 11–7–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36450; International Release No. 878; File No. SR–OPRA–95–4]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Fee Schedule Establishing Certain Fees With Respect to OPRA's Foreign Currency Options Service That Are Counterparts to Existing OPRA Fees, and Reducing Certain ''Basic Service'' Fees

November 1, 1995.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act'') notice is hereby given that on October 19, 1995,[1] the Options Price Reporting Authority (''OPRA'')[2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''), establishing certain fees with respect to OPRA's foreign currency options (''FCO'') service that are counterparts to existing OPRA fees, and reducing certain fees applicable to OPRA's basic service. OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Exchange Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to establish a Direct Access Charge and a Redistribution Fee (and, under circumstances described below, a Pass-Through Fee) with respect to OPRA's FCO service, and to make offsetting reductions in these same fees as they apply to OPRA's basic service at the time the new FCO fees go into effect. The amendment also will establish a new FCO Subscriber Indirect Access Fee, FCO Voice-Synthesized Market Data Service Fee and FCO Dial-up Market Data Service Utilization Fee applicable to the FCO service; these fees will be established on the same basis as, but at lower rates than, the corresponding fees currently applicable to OPRA's basic service. In addition, the amendment will establish zero-based (no charge) fees for providers of FCO Radio Paging Services and FCO Back-up Facilities. All of the fees will go into effect on January 1, 1996, in accordance with the OPRA Plan as amended effective March 14, 1995.

Currently, all persons who receive options last sale and quotation information directly from OPRA's processor must pay a Direct Access Charge to OPRA, and all vendors and news services that receive such information indirectly from a vendor must pay a Pass-Through Fee to OPRA equal in amount to the Direct Access Charge. In a filing still pending before the Commission (''Pending Filing''), OPRA is proposing a reduction in the amount of the Direct Access Charge, the elimination of the Pass-Through Fee, and the establishment of a new Redistribution Fee. In the present filing, these three fees have been proposed to apply to OPRA's FCO service in both the situation where the Pending Filing has been approved by January 1, 1996, as well as the situation where the Pending Filing has not been approved by that date. In either event, concurrently with the introduction of these new fees, OPRA's counterpart basic service fees will be reduced by an amount equal to the new FCO fees. OPRA's proposal will not result in an increase in these fees, but instead will result in a reallocation of these fees between OPRA's basic service and its FCO service. Therefore, on and after January 1, 1996, OPRA's Direct Access Charges, Redistribution Fees and Pass-Through Fees for its basic service and FCO service, in the aggregate, will be the same as the ''bundled'' fees in effect prior to that date.

The amendment also will establish three new fees applicable to the FCO service that will be comparable to fees currently applicable to OPRA's basic service, but at reduced rates. These fees will be in addition to the comparable basic service fees. The FCO Subscriber Indirect Access Charge is payable by every subscriber to the FCO service that receives an uncontrolled data feed transmission of FCO market data from a vendor. This fee does not apply to a subscriber that receives a data feed to a single, stand-alone computer for the sole purpose of providing a single screen display of FCO data for the subscriber's internal use. The FCO Voice-Synthesized Market Data Service Fee is a port-based fee applicable to every vendor or subscriber that offers a voice synthesized FCO market data service to persons that are not required to be approved FCO subscribers. The FCO Dial-Up Market Data Service Utilization Fee is a port-based fee applicable to every vendor that provides a dial-up FCO market data service to a customer's personal computer without requiring the customer to be an approved FCO subscriber. As alternatives to these two port-based fees, usage-based fees may be elected during a pilot period ending December 31, 1996, and thereafter if the pilot is extended or made permanent.[3]

Two other fees that currently apply to OPRA's basic service are proposed to be established at a zero rate (no charge) for the FCO service; these fees are the Radio Paging Service Fee and the Back-up Facility Access Fee. The Radio Paging Service Fee is a device-based fee payable by every vendor that offers a radio paging service to persons not required to be approved subscribers. The Back-up Facility Access Fee is a monthly fee payable by persons who maintain terminals for us as back-up facilities during times when the terminals are not being used, and is in lieu of regular subscriber device charges for such terminals.

Persons subject to the foregoing fees (including the zero-based fees) will be required to sign agreements with OPRA. Such agreements will be substantially similar to those currently required to be signed with regard to OPRA's basic service.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3), the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the

---

[1] The proposed amendment was originally filed on October 5, 1995, but was subsequently amended to incorporate the usage-based fee alternatives proposed in a separate filing (SR–OPRA–95–3). The amendment is available for inspection and copying in the Commission's Public Reference Room.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the five member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Stock Exchange (''PSE''); and the Philadelphia Stock Exchange (''PHLX'').

[3] In a separate proposal, OPRA is proposing the introduction of a usage-based alternative to its basic Voice-Synthesized Market Data Service Fee for a pilot period ending December 31, 1996, and the extension of its pilot for a usage-based basic Dial-Up Market Data Service Utilization Fee until this same date. *See* Securities Exchange Act Release No. 36402 (October 20, 1995), 60 FR 54905 (October 26, 1995).

Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, and 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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–95–4 and should be submitted by November 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27588 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36449; File No. SR-Phlx–95–66]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Extension of Public Comment Period for Proposed Rule Change

November 1, 1995.

On September 15, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1). The proposed rule change would amend: (i) Phlx Rule 1066[1] by adding new paragraph (h), P/A Orders (Principal Acting as Agent); and (ii) Phlx Rule 1015[2] by adding new paragraph (c). The proposed rule change would create a new equity options order designator, the P/A order, to ensure that when a floor trader (i.e., Specialist, market maker, Registered Options Trader, Lead Market Maker or Designated Primary Market Maker) from another options exchange in possession of a public customer order sends a mirror-image order[3] to the Phlx to obtain price improvement for that customer, the customer would receive the benefit of that better execution price, notwithstanding that the mirror-image order has been sent in the name of the floor trader. Similarly, the P/A order would ensure that when a Phlx floor trader sends such an order to another options exchange, the customer for whom the Phlx order is sent receives the benefit of the better price available on that exchange.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 36271, September 22, 1995) and by publication in the Federal Register (60 FR 50225, September 28, 1995).

The Commission has been requested to extend the time period for public comment on the proposed rule change.[4] The Commission hereby extends the period for public comment on the proposed rule change until December 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27589 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21469; File No. 812–9664]

Glenbrook Life and Annuity Company, et al.

November 2, 1995.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Glenbrook Life and Annuity Company (''Glenbrook'' or the ''Company''), Glenbrook Life and Annuity Company Separate Account A (the ''Variable Account''), and Allstate Life Financial Services, Inc. (''Allstate'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expensive risk charge from the assets of the Variable Account and other separate accounts established by Glenbrook in the future (''Other Separate Accounts'') in connection with the issuance and sale of certain deferred variable annuity contracts (''Contracts'') and/or any contracts that are similar in all material respects to the Contracts (''Other Contracts''). Applicants also respect that the exemptive relief extend to certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts (''Future Underwriters'').

FILING DATE: The application was filed on July 13, 1995, and amended on October 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 1995, and should be accompanied by proof of service on Applicants in the form of a affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, David E. Stone, Esq., Glenbrook Life and Annuity Company, 3100 Sanders Road, Northbrook, Illinois 20062.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), or (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

---

[4] 17 CFR 200.30–3(a)(29).

[1] *Philadelphia Stock Exchange Guide*, Options Rules, Rule 1066 (CCH) ¶3066.

[2] *Philadelphia Stock Exchange Guide*, Options Rules, Rule 1015 (CCH) ¶3015.

[3] A mirror-image order is an order sent by the floor trader for the exact number of contracts specified in the customer order.

[4] By letter dated October 30, 1995, the Phlx has consented to an extension of the comment period. *See* letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx to Ethan D. Corey, Senior Counsel, Division of Market Regulation, Commission.

[5] 17 CFR 200.30–3(a)(12).

Applicant's Representations

1. Glenbrook, incorporated as a stock life insurance company is 1992, is organized under the laws of Illinois. The Company is a wholly-owned subsidiary of Allstate Life Insurance Company, which is a wholly-owned subsidiary of Allstate Insurance Company. Glenbrook sells individual and group annuities and life insurance.

2. The Variable Account was established by Glenbrook as a segregated investment account pursuant to a resolution of the Board of Directors, and serves as a funding medium for variable annuity contracts issued through the Variable Account. The Variable Account is divided into sub-accounts, each of which invests solely in shares of a registered open-end management investment company (the ''Fund'').

3. Allstate, a wholly-owned subsidiary of Allstate Life Insurance Company, will serve as the principal underwriter for the Contracts. Allstate is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are individual and group flexible premium deferred annuity contracts which may be sold on a non-tax qualified basis (''Non-Qualified Contracts'') or offered in connection with retirement plans which qualify for favorable federal income tax treatment (''Qualified Contracts'').[1] The Contracts provide for, among other things: (a) minimum initial purchase payments of $5,000 ($2,000 in the case of Qualified Contracts) and minimum subsequent purchase payments of $500; (b) several annuity payment options beginning on the payout start date; and (c) if the annuitant dies during the accumulation phase, the payment of a death benefit equal to the greatest of (1) the Contract value on the date the Company receives a complete request for payment of the death benefit, (2) the amount that would have been payable in the event of a full withdrawal of the Contract value on the date the Company receives a complete request for payment of the death benefit, or (3) the Contract value on the death benefit anniversary immediately preceding the date the Company determines the death benefit adjusted by any purchase payments, withdrawals and charges made between such death benefit anniversary and the date the Company determines the death benefit. The death benefit anniversary is every seventh Contract anniversary beginning with the issue date.

5. Applicants state that, upon purchase of the Contract, the Contract owner can also select one of the following death benefit options: (a) the greatest of the anniversary values as of the date Glenbrook determines that the death benefit (where the anniversary value, which is calculated each Contract anniversary prior to the deceased's attained age 75 or 5 years after the date the Contract was issued, if later, is equal to the Contract value on a Contract anniversary, increased by purchase payments made since that anniversary and reduced by the amount of any partial withdrawals since that anniversary); or (b) total purchase payments minus the sum of all partial withdrawals (where each purchase payment and each partial withdrawal accumulates daily at a rate equivalent to 5% per year until the first day of the month following the deceased's 75th birthday or 5 years after the date the Contract was issued, if later).

6. Various fees and charges are deducted under the Contracts. An annual contract maintenance fee of $35 will be deducted from Contract value to reimburse Glenbrook for certain administrative expenses incurred in maintaining each Contract and the Variable Account. A daily asset-based administrative expense charge equal to an effective annual rate of 0.10% of the daily net assets in the Variable Account will be deducted to cover actual administrative expenses which exceed the revenues from the contract maintenance charge. These administrative fees are guaranteed not to increase for the duration of the Contract. Applicants state that the Company does not intend to profit from either of these charges.

7. Applicants state that the Company intends to deduct premium taxes either (a) at the payout start date, or (b) when a total withdrawal occurs. Glenbrook reserves the right to deduct such taxes when incurred. Premium taxes currently range from 0% to 3.5%.

8. Certain full or partial surrenders will be subject to a contingent deferred sales charge (''Withdrawal Charge'') during the first sic Contract years as follows:

No. of complete years since purchase payment being withdrawn was made	Applicable withdrawal charge percentage
0 years	6
1 years	6
2 years	5
3 years	5
4 years	4
5 years	4
6 years	3
7 years or more	0

For purposes of calculating the Withdrawal Charge, withdrawals are deemed to come from purchase payments first, beginning with the oldest purchase payment. Withdrawals made after all purchase payments have been withdrawn will not be subject to a Withdrawal Charge. In any Contract year, a Contract owner may withdraw 10% of the Contract value as of the date of the first withdrawal in the Contract year without incurring a Withdrawal Charge.

9. Proceeds from the Withdrawal Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts. Applicants state that the Withdrawal Charge may be insufficient to cover all costs relating to the distribution of the Contracts. To the extent that the Withdrawal Charge is insufficient to cover all distribution expenses, the deficiency will be met from Glenbrook's general account, which may include profits derived from the mortality and expense risk charge.

10. Applicants state that Glenbrook will assess a $10 charge on each transfer or other reallocation of Contract value among the sub-accounts in excess of 12 per Contract year.

11. Applicants state that shares of the Fund are sold to the Variable Account at net asset value. The Fund will impose certain expenses, such as an investment advisory fee, which Contract owners will bear indirectly.

12. A daily charge equal to an effective annual rate of 1.35% of the assets in the Variable Account will be deducted to compensate Glenbrook for bearing certain mortality and expense risks under the Contracts. Of that amount, approximately 0.95% is for mortality risks (0.85% for the standard death benefit and 0.10% for the enhanced death benefit) and approximately 0.40% is for the expense risk. The mortality risk arises from Glenbrook's guarantee to cover all death benefits and to make income payments in accordance with the annuity tables contained in the Contracts, thereby relieving the annuitants of the risk of outliving funds accumulated for retirement. The expense risk assumed by Glenbrook is the risk that its actual administrative costs will exceed the amount recovered through the

[1] Applicants state that a registration statement on Form N–4 was filed with the Commission to register the investment interest in the Contracts with the SEC (File No. 33–62203).

administrative expense and contract maintenance charges. Applicants guarantee that the level of this charge will not increase for the duration of the Contract. If the mortality and expense risk charge is insufficient to cover the actual mortality costs and excess expenses, Glenbrook will bear the loss.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of a 1.35% charge from the assets of the Variable Account to compensate Glenbrook for the assumption of mortality and expense risks under the Contracts. Applicants also request that such exemptive relief extend to any Other Contracts which may be issued in the future by the Variable Account or any Other Separate Account established by the Company. Applicants further request that the exemptive relief extend to Future Underwriters, certain other broker-dealers which may serve in the future as a principal underwriter of the Contracts or Other Contracts. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Glenbrook represents that the 1.25% mortality and expense risk charge (excluding the 0.10% risk charge for the enhanced death benefit) is reasonable in relation to the risks assumed by the Company under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these representations are based upon Glenbrook's analysis of publicly available information about comparable industry products, taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Glenbrook represents that it will maintain at its home office, a memorandum, available to the Commission, setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative review.

4. Applicants represent that the mortality risk charge of 0.10% for the enhanced death benefit is reasonable in relation to the risks assumed by the Company under the Contracts. Applicants state that in making this determination, Glenbrook conducted a large number of trials at various issue ages to determine the expected cost of the enhanced death benefit. Hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical owner's death during the year in question. By analyzing the results of several such simulations, Applicants state that Glenbrook was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, Glenbrook determined that a 0.10% mortality risk charge was reasonable for providing the enhanced death benefit. Glenbrook represents that the basis for this determination will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

5. Prior to issuing any Other Contracts, Applicants will determine that the aggregate mortality and expense risk charge under any Other Contracts is reasonable in relation to the risks assumed by Glenbrook and/or reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants represent that the basis for this conclusion will be set forth in a memorandum which will be maintained at Glenbrook's home office and will be available to the Commission upon request.

6. Applicants state that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the Withdrawal Charge. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements under the Contracts will benefit the Variable Account and Contract owners. Glenbrook represents that the basis for that conclusion is set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

7. Prior to issuing any Other Contracts, Applicants will determine that there is a reasonable likelihood that the proposed distribution financing arrangement under any Other Contracts will benefit the Variable Account or any Other Separate Account and Other Contract owners. Glenbrook represents that the basis for this conclusion will be set forth in a memorandum which will be maintained at its home office and will be available to the Commission upon request.

8. Applicants assert that the terms of the future relief request with respect to Other Separate Accounts, Other Contracts and Future Underwriters are consistent with the standards set forth in Section 6(c) of the 1940 Act. Applicants submit that, if Glenbrook were to seek exemptive relief repeatedly with respect to the issues addressed in this application, investors would not receive additional protection or benefit. Applicants assert that the requested relief will promote competitiveness in the variable annuity market by eliminating the need for the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Applicants represent that both the delay and the expense of repeatedly seeking exemptive relief would impair the Company's ability to effectively take advantage of business opportunities as they arise.

9. Glenbrook also represents that the Variable Account or any Other Separate Accounts will invest only in management investment companies which undertake, in the event they should adopt a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have a board of directors or trustees, a majority of whom are not ''interested persons'' of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27652 Filed 11–7–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2274]

United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee Telecommunications Development Sector (ITAC–D) Group will meet on Friday, November 17, 1995, in Room 2533A from 10:00–12:00 noon at the U.S. Department of State, 2201 ''C'' Street, NW., Washington, DC 20520.

The agenda for the ITAC–D Group meeting will include preparations and review of U.S. contributions for the ITU–D Study Group 1 (Telecommunication Development Strategies and Policies) and Study Group 2 (Development, Harmonization, Management and Maintenance of Telecommunication Networks and Services, including Spectrum Management) meetings in Geneva. ITU–D Study Group 1 is scheduled for November 27–30. ITU–D Study Group 2 is scheduled for December 4–7.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please call (202) 647–5233 no later than five (5) days before the scheduled meeting. Enter from the ''C'' Street Main Lobby. A picture ID will be required for admittance.

Dated: October 16, 1995.

Doreen F. McGirr,

Chair, U.S. ITAC for Telecommunication Development.

FR Doc. 95–27587 Filed 11–7–95; 8:45 am]

BILLING CODE 4710–45–M

Office of the Under Secretary for Economic and Agricultural Affairs

[Public Notice 2278]

Notice of Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Portal Pipeline Company for a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct an extension of its existing pipeline at the U.S.-Canadian border near Burke County, North Dakota carrying crude oil. Portal Pipeline Company is incorporated in the State of Delaware, with its corporate offices located in Dallas, Texas. The proposed pipeline extension would be constructed to cross the United States-Canada border located in lot 1 Section 27, Township 154 North, Range 92 West, Burke County, North Dakota.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Rosa Whitaker, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–2857.

Glen R. Rase,

Director, Int'l Energy and Commodities.

[FR Doc. 95–27584 Filed 11–7–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, McGhee-Tyson Airport, Knoxville, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Metropolitan Knoxville Airport Authority for McGhee-Tyson Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is October 12, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301, 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for McGhee-Tyson Airport are in compliance with applicable requirements of Part 150, effective October 12, 1995.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect the maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Metropolitan Knoxville Airport Authority. The specific maps under consideration are McGhee-Tyson Airport Existing (1995) Noise Exposure Map and Future (2000) Noise Exposure Maps submission. The FAA has determined that these maps for McGhee-Tyson Airport are in compliance with applicable requirements. This determination is effective on October 12, 1995. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not

involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports District Office, 3851 Directors Cove, Suite #3, Memphis, TN 38131–0301

Mr. William F. Marrison, Director of Airport Operations, McGhee-Tyson Airport, P.O. Box 15600, Knoxville, Tennessee 37901

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis Airports District Office, October 12, 1995.

LaVerne F. Reid,

Manager.

[FR Doc. 95–27704 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–41]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 28, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 2, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 010SW.

Petitioner: McDonnell Douglas Helicopter Systems.

Sections of the FAR Affected: 14 CFR 27.1(a).

Description of Relief Sought: To allow an increase in the maximum gross weight of the McDonnell Douglas Helicopter Systems Model MD900 from 6,000 pounds to 7,000 pounds.

Docket No.: 28186.

Petitioner: MTU Maintenance GmbH.

Sections of the FAR Affected: 14 CFR SFAR 36, section 3(a)(1).

Description of Relief Sought: To permit MTU Maintenance GmbH to develop and approve major repair data, as well as to inspect, to repair, to maintain, to overhaul, and to return into service aircraft engines, appliances, parts, and components, for installation on any U.S.-registered aircraft. These functions, if approved, would be permitted without geographical limitations and in accordance with MTU's ratings.

Docket No: 28295.

Petitioner: Delta Engineering, L.P.

Sections of the FAR Affected: 14 CFR 21.439(a) (2) and (3).

Description of Relief Sought: To permit Delta Engineering, L.P., to hold designated alteration station authorization for alterations on all aircraft type certificated under parts 23, 25, 27, 29, and their predecessor parts.

Docket No.: 28356.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 21.325(b)(1).

Description of Relief Sought: To permit the Douglas Aircraft Company (DAC) to obtain export airworthiness approvals for new aircraft that have been assembled and flight-tested under DAC's extension of its Production Certificate No. 27 to the Shanghai Aviation Industrial Corporation located in the People's Republic of China.

Docket No.: 28359.

Petitioner: Aerospace Industries Association of America, Inc./General Aviation Manufacturers Association.

Sections of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought: To permit the issuance of export airworthiness approvals for Class II and Class III products manufactured under AIA member and GAMA member production approvals at member facilities located throughout the world.

Docket No.: 27301.

Petitioner: Skydive City, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5791, which permits Skydive City, Inc., (SCI) to allow nonstudent parachutists who are foreign nationals to participate in SCI-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of the FAR. *Grant, September 29, 1995, Exemption No. 5791A*

Docket No.: 27674.

Petitioner: IBM Flight Operations.

Sections of the FAR Affected: 14 CFR 43.9(a), 43.11(a), 91.407(a)(2), and 145.57(a).

Description of Relief Sought/ Disposition: To allow IBM Flight Operations to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness release and/or approval for return to service for the aircraft operated by IBM flight Operations and aeronautical products that it maintains for its repair station customers. *Grant, September 29, 1995, Exemption No. 6176*

Docket No.: 27903.

Petitioner: Dry Creek Aviation.

Sections of the FAR Affected: 14 CFR 45.25 and 45.29(b)(1)(i).

Description of Relief Sought/ Disposition: To permit continued display of small nationality and registration marks on its Great Lakes 2T1A, N3702F airplane. *Denial, October 4, 1995, Exemption No. 6813*

Docket No.: 28000.

Petitioner: Learjet, Inc.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To allow Learjet, Inc., to assign a copy of its repair station inspection procedures manual to key individuals within departments, rather than provide a copy of the manual to each supervisory and inspection personnel. *Grant, October 4, 1995, Exemption No. 6181.*

Docket No.: 6182.

Petitioner: Steven Eugene Walz.

Sections of the FAR Affected: 14 CFR 45.22(c) and 45.29(h).

Description of Relief Sought/ Disposition: To permit Mr. Walz to operate his aircraft (Registration No. N331KW) through Air Defense Identification Zones (ADIZ) and Defense Early Warning Identification Zones (DEWIZ), without displaying temporary or permanent nationality and registration marks on the aircraft that are at least 12 inches high. *Denial, October 4, 1995, Exemption No. 6182.*

Docket No.: 28320.

Petitioner: Learjet, Inc.

Sections of the FAR Affected: 14 CFR 145.45(f) .

Description of Relief Sought/ Disposition: To allow Learjet, Inc., to assign a copy of its repair station inspection procedures manual to key individuals within departments, rather than provide a copy of the manual to each supervisory and inspection personnel. *Grant, October 4, 1995, Exemption No. 6180.*

[FR Doc. 95–27702 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Massena International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Massena International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 8, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito; Manager, New York Airports District Office; 600 Old Country Road, Suite 446; Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Duane T. Hazelton, Town Supervisor, of the Town of Massena at the following address: Town Hall, Main Street; Massena, New York, 13662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Town of Massena under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito; Manager, New York Airport District Office; 600 Old Country Road, Suite 446; Garden City, New York, 11530; telephone number (516) 227–3803. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Massena International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 11, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town of Massena was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 13, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1996.

Proposed charge expiration date: January 1, 2009.

Total estimated PFC revenue: $362,428.

Brief description of proposed project(s):

—Runway 5 Obstruction Removal
—General Aviation Apron
—Taxiway A Rehabilitation & Lighting
—Runway 23 Extension Environmental Assessment
—Parallel Taxiway A
—Runway 5 Visual Aids & Beacon
—Passenger Facility Charge Application
—Storm Water Pollution Prevention Plan
—Airport Pavement Management System
—Inadvertent Entry Fence
—Parallel Taxiway Phase II (Construction)
—Runway 23 Extension

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not Applicable, all requested to collect PFCs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Fitzgerald Federal Building # 111; John F. Kennedy International Airport; Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Town of Massena.

Issued in Jamaica, New York State on October 26, 1995.

William J. DeGraaff,

Manager, Planning and Programming Branch, Eastern Region.

[FR Doc. 95–27706 Filed 11–7–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–11]

Procurement Authority, Delegation of Authority

1. Delegations

a. Procurement Executive

The Director, Office of Procurement, Departmental Offices, is designated as Procurement Executive, in accordance

with the provisions of Executive Order (E.O.) 12931, ''Federal Procurement Reform,'' and 41 U.S.C. 414. The Director, Office of Procurement, is responsible for the maintenance and oversight of a Departmentwide procurement system and is authorized to:

(1) Prescribe and publish Departmentwide procurement policies, regulations and procedures;

(2) Enter into, make determinations and decisions and take other actions, consistent with appropriate laws, E.O.s, policies, regulations, and procedures with respect to purchases, contracts, leases, and other contractual procurement transactions, except those required by law or regulation to be made by other authority;

(3) Designate persons qualified in procurement matters as contracting officers;

(4) Review agency procurement rules, reporting requirements, contractual requirements, certification procedures, and other administrative procedures over and above those required by statute, and, where practicable, replace them with guiding principles that encourage and reward innovation;

(5) Participate as necessary in the review of agency programs to assure that such programs meet agency mission needs;

(6) Ensure that procurement organizations focus on measurable results and on increased attention to understanding and meeting customer needs;

(7) Increase the use of commercially available items where practicable, place more emphasis on past contractor performance, and promote best value rather than simply low cost in selecting sources for supplies and services;

(8) Ensure that simplified acquisition procedures are used, to the maximum extent practicable, for procurements under the simplified acquisition threshold in order to reduce administrative burdens and more effectively support the accomplishment of agency missions;

(9) Expand the use of the Government purchase card by the agency and take maximum advantage of the micro-purchase authority provided in the Federal Acquisition Streamlining Act of 1994 by delegating the authority, to the maximum extent practicable, to the offices that will be using the supplies or services to be purchased;

(10) Establish clear lines of contracting authority and accountability;

(11) Establish career education programs for procurement professionals, including requirements for successful completion of educational requirements or mandatory training for entry level positions and for promotion to higher level positions, in order to ensure a highly qualified procurement work force;

(12) Review as appropriate information technology acquisitions and contracts to ensure that the agency receives the best value with regard to price and technology, and consider alternatives in cases where best value is not being obtained;

(13) Promote innovative practices and develop streamlined processes to improve procurement and increase productivity;

(14) Evaluate and monitor the performance of the Department's procurement system;

(15) Designate, pursuant to 41 U.S.C. 418, the Department of the Treasury advocate for competition, and pursuant to 41 U.S.C. 253j, a task and delivery order ombudsman who meets the qualifications required by that provision;

(16) Develop and maintain an automated procurement data system, as required by Office of Federal Procurement Policy Act, as amended, and assure that procurement data submitted to the Federal Procurement Data System is accurate, complete and timely;

(17) Approve, prior to development, other Departmentwide and bureau automated procurement systems;

(18) Encourage the use of information technology to support procurement and lead/direct efforts towards standardization, including the development of interfaces with other Departmental systems, such as the financial management accounting system, to increase productivity and streamline the procurement process;

(19) Designate, pursuant to 41 U.S.C. 252c, a program manager, reporting directly to the Procurement Executive, to direct the development and implementation of an electronic commerce capability for acquisition, compliant with the Federal Acquisition Computer Network architecture referred to as FACNET in the Federal Acquisition Streamlining Act of 1994;

(20) Implement an effective and efficient contract administration program that includes certification of contracting officer technical representatives and adequate training of procurement personnel; and

(21) Establish Procurement Councils of Departmental and bureau officials as necessary to assist in accomplishing all responsibilities.

b. Bureau Head Procurement Authority

(1) The following officials of the Department of the Treasury are delegated authority to perform the functions described in paragraphs 1.a.(2), 1.a.(3), 1.a.(5) through 1.a.(13), and 1.a.(20), with respect to procurement transactions and operations of their organizations:

(a) Deputy Assistant Secretary (Administration);

(b) Director, Bureau of Alcohol, Tobacco and Firearms;

(c) Comptroller of the Currency;

(d) Commissioner, U.S. Customs Service;

(e) Director, Bureau of Engraving and Printing;

(f) Director, Federal Law Enforcement Training Center;

(g) Commissioner, Financial Management Service;

(h) Commissioner, Internal Revenue Service;

(i) Director, United States Mint;

(j) Director, Office of Thrift Supervision;

(k) Commissioner, Bureau of the Public Debt; and

(l) Director, U.S. Secret Service.

(2) Each of the officials named in paragraph 1.b.(1) shall also appoint a Competition Advocate in accordance with 41 U.S.C. 418 and regulations issued by the Procurement Executive.

2. Redelegation

The authorities delegated in paragraphs 1.a.(2), 1.a.(3), 1.a.(5) through 1.a.(13), and 1.a.(20) may be redelegated by the Director, Office of Procurement, and by each of the officials named in paragraph 1.b.(1), to any subordinate officer or employee of their respective organizations, except that the authority of paragraphs 1.a.(2) and 1.a.(3) may be delegated only to personnel meeting the requisite qualifications standards to serve as Contracting Officers for the United States for the type and complexity of procurement actions specified.

3. Limitations

All authorities delegated, regardless of whether the affected procurement transactions are funded by appropriated or non-appropriated funds, shall be exercised in accordance with applicable limitations of:

a. the Federal Property and Administrative Services Act of 1949;

b. the Office of Federal Procurement Policy;

c. ''Federal Acquisition Regulation,'' 48 CFR Chapter 1;

d. the ''Federal Property Management Regulation,'' 41 CFR Chapter 101;

e. the ''Federal Information Resources Management Regulation,'' 41 CFR Chapter 201; and

f. regulations issued by the Department of the Treasury including, but not limited to, 48 CFR Chapter 10.

4. Proviso

Notwithstanding any other provision of this Directive, the Director, Office of Thrift Supervision, shall exercise any authority conferred by section 9(e) of the Home Owners Loan Act, 12 U.S.C. 1467(e), regarding regulations with respect to the use of assessments and fees collected under that section.

5. Cancellation

Treasury Directive 12–11, ''Procurement Authority,'' dated January 29, 1987, is superseded.

6. References

a. Federal Property and Administrative Services Act of 1949, as amended.

b. 48 CFR Chapter 1, Federal Acquisition Regulation.

c. 48 CFR Chapter 10, Subchapter E, General Contracting Requirements.

d. 41 CFR Chapter 101, Federal Property Management Regulation.

e. 41 CFR Chapter 201, Federal Information Resources Management Regulation.

7. Authorities

a. E.O. 12931, ''Federal Procurement Reform,'' dated October 13, 1994.

b. ''Federal Acquisition Streamlining Act of 1994,'' Pub. L. 103–355.

c. Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 401 *et. seq.*

d. ''Competition in Contracting Act of 1984,'' Pub. L. 98–369, Division B, Title VII, codified in relevant part at 41 U.S.C. 418.

e. Treasury Order 101–30, ''Designation of 'Head of Agency' for Procurement Matters.''

8. Expiration Date

This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

9. Office of Primary Interest

Office of Procurement, Office of the Deputy Assistant Secretary (Departmental Finance and Management), Office of the Assistant Secretary (Management) & Chief Financial Officer.

Dated: October 31, 1995.

George Muñoz,

Assistant Secretary for Management and CFO.

[FR Doc. 95–27585 Filed 11–7–95; 8:45 am]

BILLING CODE 4810–25P

[Treasury Directive Number 11–02]

Delegation of Authority for Administering the Community Development Financial Institutions Fund

Dated: November 1, 1995.

1. *Delegation.*

a. Pursuant to Treasury Order (TO) 101–20, this Directive delegates to the Director, Community Development Financial Institutions Fund, all duties, powers, rights, and obligations vested by TO 101–20 in the Under Secretary (Domestic Finance) for purposes of administering the Community Development Financial Institutions Fund.

b. The Director, Community Development Financial Institutions Fund, is designated as an officer of the Community Development Financial Institutions Fund pursuant to section 104(b)(3) of the Community Development Banking and Financial Institutions Act of 1994, subtitle A of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, September 23, 1994).

2. The Director, Community Development Financial Institutions Fund, shall report to the Under Secretary (Domestic Finance).

3. The Director, Community Development Financial Institutions Fund, may redelegate such of the authority granted under this Directive as the Director deems appropriate.

4. *Authority.* TO 101–20, ''Administering the Community Development Financial Institutions Fund,'' dated August 14, 1995.

5. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

6. *Office of Primary Interest.* Office of the Under Secretary (Domestic Finance).

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 95–27639 Filed 11–7–95; 8:45 am]

BILLING CODE 4810–25–P

Office of Thrift Supervision

[AC–54; OTS No. 2522 and N1551]

Charter Bancorp, M.H.C., Sparta, Illinois; Approval of Conversion Application

Notice is hereby given that on October 27, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Charter Bancorp, M.H.C., Sparta, Illinois, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 2, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–27578 Filed 11–7–95; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Department of Veterans Affairs Regional Office, 20 Washington Pl., Newark, New Jersey 07102, from December 6, 1995, through December 8, 1995. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for Veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former prisoners of war; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting

former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: October 30, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–27655 Filed 11–7–95; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
November 8, 1995

Part II

Department of Agriculture

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department due to a reorganization.

EFFECTIVE DATE: November 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On June 16, 1995, USDA published in the Federal Register (60 FR 31766–31840) a proposal to revise the delegations of authority appearing in 7 CFR Part 2 due to a reorganization of the department. The revised delegations were intended to effectuate the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354. The Act permits the Secretary to reorganize the Department of Agriculture. The Act authorized the establishment of subcabinet positions and the restructuring of agencies and offices of the Department of Agriculture. In addition, the proposal noted that pursuant to Public Law 101–576, the Chief Financial Officers Act of 1990, there is required to be in the Department of Agriculture the position of Chief Financial Officer (CFO). The document proposed making delegations to the CFO. Finally the document proposed changing the name of the Consolidated Farm Service Agency to the ''Farm Service Agency.''

The majority of comments that were received were from employees of USDA who recommended that the name of the Consolidated Farm Service Agency be changed to the Farm Service Agency. Thirteen comments were received that could not be identified as being from employees of USDA. Twelve were in favor of changing the name; one was against. All the favorable comments noted that the word ''Consolidated'' added little to describing the function of the agency. Upon considering all the comments received, it is determined that the name of the agency should be changed to the Farm Service Agency since that name better reflects the mission of the agency. In addition, as a result of comments that were made, revisions were made in the following sections:

Section 2.7. The term ''administrative rules and regulations'' is changed to ''administrative directives'' to clarify that the authority delegated is to be exercised in accordance with applicable internal directives. The term ''in this part or elsewhere'' is changed to ''in this part'' to clarify that agency heads delegated authority in this regulation report to a general officer.

Section 2.16(a)(2)(i)(A). The proposal excepts from the authority delegated to the Under Secretary for Farm and Foreign Agricultural Services, the authority to administer section 303(a) (2) and (3) of the Consolidated Farm and Rural Development Act (''Con Act''), relating to real estate loans for recreation and non-farm purposes. It has been determined that the authority to administer section 303(a) (2) and (3) of the Con Act should have been included in the Under Secretary's delegation. Accordingly, the paragraph is deleted and the remaining paragraphs in section 2.16(a)(2)(i) are renumbered.

Section 2.16(a)(3)(x). Adds to the list of acts administered by the Under Secretary for Farm and Foreign Agricultural Services, ''the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819)''.

Section 2.22(a)(1)(viii)(EE). To be consistent with the above delegation to the Under Secretary for Farm and Foreign Agricultural Services, the phrase ''except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x)'' is added to the delegation to the Assistant Secretary for Marketing and Regulatory Programs relating to the Pork Promotion, Research, and Consumer Information Act of 1985.

Section 2.22(a)(2)(xxiii). The citation to the 28 Hour Law is corrected to read ''49 U.S.C. 80502'' in the delegation to the Assistant Secretary for Marketing and Regulatory Programs.

Section 2.28(b)(16). The proposed delegation to the Chief Financial Officer is revised to add the authority to provide budget, accounting, fiscal and related management services, with authority to take action required by law or regulation to provide such services for Working Capital Funds and general appropriated and trust funds for the Secretary of Agriculture; General Officers of the Department, except the Inspector General; for offices reporting to the Assistant Secretary for Administration; and for any other officer or agency as may be agreed upon. This authority was inadvertently omitted. This authority formerly was exercised by the Assistant Secretary for Administration.

Section 2.42(a)(28)(i). This paragraph is revised to parallel the revision made to section 2.16(a)(2)(i)(A). The proposal excepts from the authority delegated to the Administrator, Farm Service Agency, the authority to administer section 303(a) (2) and (3) of the Con Act, relating to real estate loans for recreation and non-farm purposes. It has been determined that the authority to administer section 303(a) (2) and (3) of the Con Act should have been included in the Administrator's delegation. Accordingly, the provision is deleted and the remaining paragraphs in section 2.42(a)(28) are renumbered.

Section 2.43(a)(24). This paragraph is revised to parallel the revision made to section 2.16(a)(3)(x). It adds to the list of acts administered by Administrator, Foreign Agricultural Service, ''the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819)''.

Section 2.79(a)(8)(xxxix). This paragraph is revised to parallel the revision made to section 2.22(a)(1)(viii)(EE). It adds the phrase ''except as specified in § 2.43(a)24)'' to the delegation to the Administrator, Agricultural Marketing Service relating to the Pork Promotion, Research, and Consumer Information Act of 1985.

Section 2.80(a)(23). The citation to 28 Hour Law was corrected to read ''49 U.S.C. 80502'' in the delegation to the Administrator, Animal and Plant Health Inspection Service.

Section 2.87(a)(12). In this paragraph, the Assistant Secretary for Administration has proposed delegating to the Director, Office of Civil Rights Enforcement, the authority to perform investigations and make determinations on both the merits and required corrective action as to complaints that allege discrimination in USDA programs and activities. The Assistant Secretary has determined that he should make the final determinations on both the merits and required corrective action as to these complaints. Accordingly, that portion of the paragraph that delegates such responsibilities to the Director, Office of Civil Rights Enforcement, is deleted.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is revised as set forth below.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart A—General

Sec.
2.1 Establishment of the Department.
2.2 Authority of the Secretary to prescribe regulations.
2.3 Authority of the Secretary to delegate authority.
2.4 General officers.
2.5 Order in which officers of the Department shall act as Secretary.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

2.7 Authority to supervise and direct.
2.8 Delegations of authority to Agency Heads to order that the United States flag be flown at half-staff.
2.9 Additional delegations.
2.10 Limitations.
2.11 New principles and periodic reviews.
2.12 Secretary and general officers not precluded from exercising delegated powers.
2.13 Status of prior delegations.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2.15 Deputy Secretary.
2.16 Under Secretary for Farm and Foreign Agricultural Services.
2.17 Under Secretary for Rural Economic and Community Development.
2.18 Under Secretary for Food Safety.
2.19 Under Secretary for Food, Nutrition, and Consumer Services.
2.20 Under Secretary for Natural Resources and Environment.
2.21 Under Secretary for Research, Education, and Economics.
2.22 Assistant Secretary for Marketing and Regulatory Programs.
2.23 Assistant Secretary for Congressional Relations.
2.24 Assistant Secretary for Administration.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2.26 Director, Office of the Executive Secretariat.
2.27 Office of Administrative Law Judges.
2.28 Chief Financial Officer.
2.29 Chief Economist.
2.30 Director, Office of Budget and Program Analysis.
2.31 General Counsel.
2.32 Alternative Agricultural Research and Commercialization Board.
2.33 Inspector General.
2.34 Director, National Appeals Division.
2.35 Judicial Officer.
2.36 Director, Office of Communications.

Subpart E—Delegations of Authority by the Deputy Secretary

2.37 Director, Office of Small and Disadvantaged Business Utilization.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.
2.42 Administrator, Farm Service Agency.
2.43 Administrator, Foreign Agricultural Service.

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

2.45 Deputy Under Secretary for Rural Economic and Community Development.
2.47 Administrator, Rural Utilities Service.
2.48 Administrator, Rural Business and Cooperative Development Service.
2.49 Administrator, Rural Housing and Community Development Service.

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

2.51 Deputy Under Secretary for Food Safety.
2.53 Administrator, Food Safety and Inspection Service.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Consumer Service.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
2.61 Chief, Natural Resources Conservation Service.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Administrator, Cooperative State Research, Education, and Extension Service.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.

Subpart L—Delegations of Authority by the Chief Economist

2.70 Deputy Chief Economist.
2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.
2.72 Chairman, World Agricultural Outlook Board.

Subpart M—Delegations of Authority by the Chief Financial Officer

2.75 Deputy Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Congressional and Intergovernmental Relations.

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

2.87 Deputy Assistant Secretary for Administration.
2.89 Director, Office of Civil Rights Enforcement.
2.90 Director, Office of Information Resources Management.
2.91 Director, Office of Operations.
2.92 Director, Office of Personnel.

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart A—General

§ 2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§ 2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property.

§ 2.3 Authority of the Secretary to delegate authority.

(a) The general authority of the Secretary to make delegations of his authority is based on:

(1) Section 4(a) of Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), which provides that the Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by an agency or

employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan; and

(2) Section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, 7 U.S.C. 6912(a)(1), which provides that the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under 7 U.S.C. 6912(a) or any other function vested in the Secretary as of the date of the enactment of the Act.

(6) [Reserved]

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary; the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Assistant Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the General Counsel; the Inspector General; the Chief Financial Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; the Director of Communications; and the Director, Office of Small and Disadvantaged Business Utilization.

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, 3 CFR, 1977 Comp., p. 79, in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated in paragraphs (a)(1) through (a)(10) of this section shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Rural Economic and Community Development.

(3) The Under Secretary for Food Safety.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The General Counsel.

(8) The Assistant Secretary for Marketing and Regulatory Programs.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

(b) [Reserved]

Subpart B—General Delegations of Authority by the Secretary of Agriculture

§ 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated, the delegations of authority to each general officer of the Department and each agency head contained in this part includes the authority to direct and supervise the employees engaged in the conduct of activities under such official's jurisdiction, and the authority to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his or her responsibilities. This authority will be exercised subject to applicable administrative directives. Unless otherwise provided, a general officer or agency head may, subject to his or her continuing responsibility for the proper discharge of delegations made to him, in this part, delegate and provide for the redelegation of his or her authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads who are delegated authority from a general officer, in this part, report to and are under the supervision of that general officer.

§ 2.8 Delegations of authority to Agency Heads to order that the United States flag be flown at half-staff.

Pursuant to section 5 of Proclamation 3044, 3 CFR, 1954–1958 Comp., p. 4, each general officer and agency head is delegated authority to order that the United States flag shall be flown at half-staff on buildings and grounds under his or her jurisdiction or control. This authority shall be exercised in accordance with directives promulgated by the Director, Office of Operations.

§ 2.9 Additional delegations.

The authority granted to a general officer may be exercised in the discharge of any additional functions which the Secretary may assign.

§ 2.10 Limitations.

The delegations made in this part shall not be construed to confer upon any general officer or agency head the authority of the Secretary to prescribe regulations which by law require approval of the President.

§ 2.11 New principles and periodic reviews.

In the exercise of authority delegated by the Secretary, the application of new principles of major importance or a departure from principles established by the Secretary should be brought to the attention of the Secretary. General officers are responsible for assuring that periodic reviews are conducted of the activities of the agencies assigned to their direction and supervision, as required by 5 U.S.C. 305.

§ 2.12 Secretary and general officers not precluded from exercising delegated powers.

No delegation of authority by the Secretary or a general officer contained in this part shall preclude the Secretary or general officer from exercising any of the authority so delegated.

§ 2.13 Status of prior delegations.

Nothing in this part shall affect the bylaws of the Commodity Credit Corporation, the Federal Crop Insurance Corporation, or the Rural Telephone Bank. All delegations previously made which are inconsistent with delegations made in this part are superseded; however, any regulation, order, authorization, expenditure, or other instrument, heretofore issued or made pursuant to any delegation of authority shall continue in full force and effect unless and until withdrawn or superseded pursuant to authority granted in this part.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

§ 2.15 Deputy Secretary.

The following delegation of authority is made by the Secretary of Agriculture to the Deputy Secretary: Perform all of the duties and exercise all of the powers and functions which are now or which may hereafter be, vested in the Secretary of Agriculture. This delegation is subject to the limitation in § 2.10.

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services:

(1) *Related to consolidated farm service.*

(i) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(ii) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*).

(iii) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(A) Clearing photography projects;

(B) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(C) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(D) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(E) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction, and serving as liaison with other governmental agencies on aerial photography but excluding mapping;

(F) Providing a Chairperson for the Photography Sales Committee of the Department;

(G) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(H) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(I) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(J) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(iv) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(v) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(vi) Conduct fiscal, accounting and claims functions relating to Commodity Credit Corporation (CCC) programs for which the Under Secretary for Farm and Foreign Agricultural Services has been delegated authority under paragraph (a)(3) of this section and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(vii) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(viii) Supervise and direct Farm Service Agency State and county offices and delegate functions to be performed by Farm Service Agency State and county committees.

(ix) Administer the dairy indemnity program under the Act of August 13, 1968, as amended (7 U.S.C. 450j *et seq.*).

(x) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated in paragraph (a)(3) of this section and to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19, and assist the Under Secretary for Food, Nutrition, and Consumer Services and the Assistant Secretary for Marketing and Regulatory Programs in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(xi) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781, *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(xii) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*), except those functions delegated in § 2.21(a)(8)(xi).

(xiii) Administer energy management activities as assigned.

(xiv) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(xv) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(xvi) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(xvii) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(xviii) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(xix) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(xx) Administer the Integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(xxi) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(xxii) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(xxiii) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(2) *Related to farm credit.* (i) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), except for the authority contained in the following sections:

(A) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(B) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(C) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the emergency community water assistance grant programs;

(D) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(G) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(H) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(I) Section 342 (7 U.S.C. 1013a);

(J) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(K) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(ii) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(iii) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(iv) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(v) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(vi) Administer the Emergency Loan and Guarantee Programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(vii) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(viii) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(ix) Service, collect, settle, and liquidate:

(A) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(B) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(C) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(x) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(xi) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*)

(xii) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(xiii) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. 103–248 (7 U.S.C. 1981(c)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(3) *Related to foreign agriculture.* (i) Coordinate the carrying out by Department agencies of their functions involving foreign agricultural policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development, and other departments, agencies, and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private U.S. and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(ii) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(iii) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(iv) Conduct functions of the Department relating to GATT, WTO, the

Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act, and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(v) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(vi) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(vii) Administer functions of the Department relating to import controls, except those functions reserved to the Secretary in paragraph (b) of this section and those relating to section 8e of the Agricultural Act of 1938 (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs. These include:

(A) Functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624);

(B) General note 15(c) to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(C) Requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Recovery Act of 1983 (19 U.S.C. 2703(f));

(D) Section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(E) Section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e));

(F) Functions under sections 309 and 316 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3358 and 3381);

(G) Section 301(a) of the United States-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note); and

(H) Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

(viii) Represent the Department on the Interdepartmental Committee for Export Control and to conduct departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under paragraph (b)(2) of this section.

(ix) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such Agreement.

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(xi) Formulate policies and administer barter programs under which agricultural commodities are exported.

(xii) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities under Public Law 480, 83rd Congress, hereafter referred to as ''Public Law 480'' (7 U.S.C. 1691, 1701 *et seq.*).

(xiii) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*), and payment and related services with respect to export programs and barter operations.

(xiv) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(xvi) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(xvii) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(xviii) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(xix) Determine the agricultural commodities acquired under price support programs which are available for export and allocate such commodities among the various export programs.

(xx) Conduct economic analyses pertaining to the foreign sugar situation.

(xxi) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(xxii) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xxiii) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(xxiv) Establish and administer regulations relating to foreign travel by

employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(xxv) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(xxvi) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated to the Assistant Secretary for Marketing and Regulatory Programs in § 2.22(a)(2)(i), but including authority to approve joint regulations issued by the Department of State and authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(xxvii) Establish and maintain U.S. Agricultural Trade Offices, to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a-g).

(xxviii) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities.

(xxix) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(xxx) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

(xxxii) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(xxxiii) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(xxxiv) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(xxxv) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(xxxvi) Direct and coordinate the Department's work in international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201–2202).

(xxxvii) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(xxxviii) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(xxxix) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(xl) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(xli) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(xlii) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(4) *Related to federal crop insurance.* (i) Exercise general supervision of the Federal Crop Insurance Corporation.

(ii) Appoint such officers and employees as may be necessary for the transaction of the business of the Corporation, except, as provided in paragraph (b)(3) of this section.

(5) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(6) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural and related agribusiness facilities; CCC resources; farm credit and financial assistance; and foreign agricultural intelligence and other foreign agricultural matters.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to farm service.* (i) Appointment of Farm Service Agency State committeemen.

(ii) Final approval of regulations relating to the selection and exercise of the functions of committees promulgated under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)).

(2) *Related to foreign agriculture.* (i) Approving export controls with respect to any agricultural commodity, including fats and oils or animal hides or skins as provided for in the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*).

(ii) Advising the President that imports are having the effect on programs or operations of this Department required as a prerequisite for the imposition of import controls under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624a), recommending that the President cause an investigation to be made by the Tariff Commission of the facts so that a determination can be made whether import restrictions should be imposed under that Act, and determining under section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e)) that there exists a serious injury, or threat thereof and recommending to the President whether or not to take action.

(iii) Determining the agricultural commodities and the quantities thereof available for disposition under Public Law 480 (7 U.S.C. 1731).

(3) *Related to federal crop insurance.*

(i) Appointment of the Board of Directors, Federal Crop Insurance Corporation.

(ii) Appointment of the Manager, Federal Crop Insurance Corporation.

§ 2.17 Under Secretary for Rural Economic and Community Development.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Rural Economic and Community Development:

(1) Provide leadership and coordination within the executive branch of a Nationwide Rural Development Program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating official for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) *Related to committee management.* Establish and reestablish

regional, state, and local advisory committees for activities under his or her authority. This authority may not be re-delegated.

(14) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning rural development credit and financial assistance.

(15) *Related to energy.* (i) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

(ii) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(iii) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(16) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service, the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service, or their predecessor agencies.

(17) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service, the Rural Business and Cooperative Development Service and the Rural Utilities Service.

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(20) *Related to rural utilities service.* (i) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa *et seq.*): Provided, however, that the Under Secretary may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(ii) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(iii) Designate the chief executive officer of the Rural Telephone Bank.

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(B) Section 306A (7 U.S.C. 1926a);

(C) Section 306B (7 U.S.C. 1926b);

(D) Section 306C (7 U.S.C. 1926c);

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(G) Section 310B(b) (7 U.S.C. 1932(b));

(H) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships; and

(I) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural utility activities.

(v) Administer section 8, and those functions with respect to repayment of obligations under section 4 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(vi) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(vii) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(viii) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).

(ix) Administer Water and Waste Facility Programs and activities (7 U.S.C. 1926–1).

(21) *Related to rural business and cooperative development.* (i) Administer the Rural Economic Development Loan and Grant Programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306(a)(11)(A) (7 U.S.C. 1926 (a)(11)(A)), relating to grants for business technical assistance and planning;

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business and cooperative development activities.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(v) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(vi) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(vii) Administer the Drought and Disaster Guaranteed Loan Program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(viii) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(ix) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(x) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(xi) Exercise administrative oversight over the Alternative Agricultural Research and Commercialization Center established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

(xii) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(xiii) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(xiv) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(A) Exchanging materials and results with such institutions or organizations;

(B) Engaging in joint or coordinated activities; or

(C) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(xv) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Public Law 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*)

(xvi) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(xvii) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(xviii) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(xix) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(xx) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program (7 U.S.C. 2204; 7 U.S.C. 2204b).

(22) *Related to rural housing and community development.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing and community development activities.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(iii) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(iv) Administer the Rural Housing Disaster Program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(v) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (42 U.S.C. 1480(d)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to rural business and cooperative development.* Submission to the Congress of the report required pursuant to section 1469 of Pub. L. No. 101–624.

(2) [Reserved]

§ 2.18 Under Secretary for Food Safety.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food Safety:

(1) *Related to food safety and inspection.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(ii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(C) Egg Products Inspection Act, except for the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(D) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(E) Humane Slaughter Act (7 U.S.C. 1901–1906);

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products; and

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427).

(iii) Coordinate with the Assistant Secretary for Marketing and Regulatory Programs the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(iv) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(2) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning the wholesomeness of meat and poultry and products thereof and inspection of eggs and egg products.

(4) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology as they may affect the safety of meat, poultry or egg products.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may

obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services:

(1) *Related to food and nutrition.* (i) Administer the following legislation:

(A) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(B) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(ii) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(A) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(B) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(C) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937, as amended (15 U.S.C. 713c), and related legislation;

(D) Section 9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b);

(E) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(F) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(G) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(H) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(I) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(J) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(K) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. 97–98);

(L) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(M) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(N) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(iii) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1)(i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(v) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(2) *Related to consumer advice.* (i) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(ii) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(iii) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(iv) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(v) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public

participation programs, policies and information, and to prevent duplication of responsibilities.

(vi) Serve as a consumer ombudsman and communication link between consumers and the Department.

(vii) Approve the designation of agency Consumer Affairs Contacts.

(3) *Related to human nutrition information.* (i) Develop techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet.

(ii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels.

(iii) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(iv) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(v) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Coordinate nutrition education promotion and professional education projects within the Department.

(vii) Analyze data from food consumption surveys in coordination with the Under Secretary for Research, Education, and Economics to provide a basis for evaluating dietary adequacy.

(viii) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies (7 U.S.C. 3171–3175).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning food stamp assistance.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to food and nutrition.* Authority to appoint the members of the National Advisory Council on Maternal, Infant, and Fetal Nutrition as directed in section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(k)).

(2) [Reserved]

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment:

(1) *Related to environmental quality.* (i) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(ii) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(iii) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(v) Provide staff support for the Secretary in the review of environmental impact statements.

(vi) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iii) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(iv) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(v) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vi) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(vii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 402(a)).

(viii) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR parts 215 and 217 and 36 CFR part 251, subpart C.

(ix) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(x) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xi) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xiv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xv) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvi) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xvii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xviii) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xix) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106).

(xx) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxi) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(xxiii) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiii)(A)(*1*), (*2*) and (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(*1*) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(*2*) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act (33 U.S.C. 701b–1); and

(*3*) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxiv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxv) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(xxvi) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxvii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance

with national and international regulations and policies for radio frequency use; and

(E) Representing USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(xxviii) [Reserved]

(xxix) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(xxx) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxi) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiii) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(xxxiv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxv) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(xxxvi) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(xxxvii) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(3) *Related to natural resources conservation.* (i) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(A) Quality in the natural resource base for sustained use;

(B) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(C) Quality in the standard of living based on community improvement and adequate income.

(ii) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 4201 note), except as otherwise delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(1)(lxii).

(iii) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–l, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(A) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(*1*) Comprehensive planning assistance in nonmetropolitan districts;

(*2*) Assistance in the field of income-producing recreation on rural non-Federal lands;

(*3*) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(*4*) Assistance in developing programs relating to natural beauty; and

(*5*) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*i*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*ii*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs;

(B) Soil Surveys, including:

(*1*) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(*2*) Conducting soil surveys for resource planning and development; and

(*3*) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps;

(C) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(D) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(E) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(iv) Administer the Watershed Protection and Flood Prevention Programs, including:

(A) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(B) The emergency flood control work under 33 U.S.C. 701b–1;

(C) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006;

(D) The pilot watershed projects under 16 U.S.C. 590 a–f and 16 U.S.C. 1001–1009;

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development;

(F) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(G) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

(v) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b), 590q and 590q–3.

(vi) Administer the Resource Conservation and Development Program under 16 U.S.C. 590 a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Rural Economic and Community Development.

(vii) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(viii) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*).

(ix) Administer the Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(x) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(xi) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(xxii) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c), including:

(A) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) Conduct salinity control studies of irrigated salt source areas;

(C) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(D) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(E) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(F) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(xiii) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(A) The conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(B) Technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(C) The Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(D) The Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(E) The Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(xiv) Approve and transmit to the Congress comprehensive river basin reports.

(xv) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(xvi) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(xviii) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(xix) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(xx) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(4) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(6) *Related to surface mining control and reclamation.* Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(7) *Related to environmental response.* (i) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section

107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(ii) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(A) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(B) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(C) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(D) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(E) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(F) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(G) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(H) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(I) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(J) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(K) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(L) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(M) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(N) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(O) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), relating to mixed funding agreements.

(iii) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to natural resource conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(2) [Reserved]

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics.

(1) *Related to science and education.* (i) Direct, coordinate and provide national leadership and support for research, extension and teaching programs in the food and agricultural sciences to meet major needs and challenges in development of new food and fiber; food and agriculture viability and competitiveness in the global economy; enhancing economic opportunities and quality of life for rural America; food and agricultural system productivity and development of new crops and new uses; the environment and natural resources; or the promotion of human health and welfare pursuant to the National Agricultural Research, Extension, and Teaching Policy of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(ii) Provide national leadership and support for research, extension, and teaching programs in the food and agricultural sciences to carry out sustainable agriculture research and education; a National Plant Genetic Resources Program; a national agricultural weather information system; research regarding the production, preparation, processing, handling, and storage of agricultural products; a Plant and Animal Pest and Disease Control Program; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3703), except the provisions relating to the USDA Graduate School in section 1669 and the provisions relating

to alternative agricultural research and commercialization under sections 1657–1664 (7 U.S.C. 5801 *et seq.*).

(iii) Coordinate USDA policy and conduct programs relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons (7 U.S.C. 178–178n).

(v) Conduct research on the control of undesirable species of honey bees in cooperation with specific foreign governments (7 U.S.C. 284).

(vi) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(vii) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(viii) Administer a Cooperative Agricultural Extension Program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(ix) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(x) Support agricultural research at eligible institutions in the States through the provision of Federal-grant funds to help finance physical research facilities (7 U.S.C. 390–390k).

(xi) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(xii) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(xiii) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(xiv) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(xv) Administer and conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, and animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in § 2.22(a)(1)(ii) and § 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201, and 2204).

(xvi) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(xvii) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(xviii) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i).

(xx) Administer and direct a program of competitive and special grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals and of facilities grants to State agricultural experiment stations and designated colleges and universities to promote research in food, agriculture and related areas (7 U.S.C. 450i).

(xxi) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(xxii) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities (7 U.S.C. 950aa–1).

(xxiii) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(xxiv) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the byproducts thereof (7 U.S.C. 1292).

(xxv) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(xxvi) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii) Administer a competitive grant program for non- profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(xxix) Administer a Nutrition Education Program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(xxx) Conduct education and extension programs and a pilot project related to nutrition education (7 U.S.C. 2027(a) and 5932).

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(xxxii) Develop and maintain national and international library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(xxxiii) Accept gifts and order disbursements from the Treasury for carrying out of National Agricultural Library (NAL) functions (7 U.S.C. 2264–2265).

(xxxiv) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(xxxv) Administer, in cooperation with the States, a Cooperative Rural Development and Small Farm Research and Extension Program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(xxxvi) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(xxxvii) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(xxxviii) Establish a Joint Council on Food and Agricultural Sciences to bring about more effective research, extension, and teaching in the food and agricultural sciences (7 U.S.C. 3122).

(xxxix) Establish and oversee the National Agricultural Research and Extension Users Advisory Board and the Agricultural Science and Technology Review Board (7 U.S.C. 3123 and 3123A).

(xl) Provide and distribute information and data about Federal, State, local, and other Rural Development Assistance Programs and services available to individuals and organizations. To the extent possible, NAL shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(xli) Assemble and collect food and nutrition educational material, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(xlii) Conduct programs related to composting research and extension (7 U.S.C. 3130).

(xliii) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(xliv) Formulate and administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(xlv) Administer the National Food and Agricultural Sciences Teaching Awards Program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(xlviii) Establish a national food science and research center for the Southeast Region of the United States and administer a National Food and Human Nutrition Research and Extension Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(xlix) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(l) Support continuing agricultural and forestry extension and research, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(li) Support agricultural research at the 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance physical facilities (7 U.S.C. 3223).

(lii) Make grants, under such terms and conditions as the Under Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural science, education and development activities (7 U.S.C. 3291).

(liv) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(lv) Conduct program evaluations to improve the administration and effectiveness of agricultural research, extension, and teaching programs (7 U.S.C. 3317).

(lvi) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agriculture sciences (7 U.S.C. 3318).

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(lviii) Conduct research and develop and implement a pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers; and making grants to aquaculture research facilities to do research on intensive water recirculating systems (7 U.S.C. 3321–3323).

(lx) Administer a Cooperative Rangeland Research Program (7 U.S.C. 3331–3336).

(lxi) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(lxii) Design and implement educational programs and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland, and designate a farmland information center, pursuant to section 1544 of the Farmland Protection Policy Act (7 U.S.C. 4205).

(lxiii) Conduct programs of education, extension, and research related to water quality, agrichemicals and nutrient management (7 U.S.C. 5503–5506).

(lxiv) Administer programs and conduct projects for research, extension, and education on sustainable agriculture (7 U.S.C. 5811–5813).

(lxv) Conduct research and cooperative extension programs to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(lxvi) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(lxvii) Administer a competitive grant program to organizations to carry out a

training program on sustainable agriculture (7 U.S.C. 5832).

(lxviii) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841–5844).

(lxix) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(lxx) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including a competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(lxxi) Administer a research and extension grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(lxxii) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(lxxiii) Administer and conduct research and extension programs on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(lxxiv) Establish a National Pesticide Resistance Monitoring Program and disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(lxxv) Administer and conduct research and grant programs on the control and eradication of exotic pests (7 U.S.C. 5883).

(lxxvi) Conduct research and educational programs to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(lxxvii) Administer research programs and grants for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(lxxviii) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(lxxix) Establish and coordinate USDA grant programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(lxxx) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(lxxxi) Administer a grants program to States on immunoassay as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(lxxxii) Conduct research programs for the development of technology to determine animal lean content (7 U.S.C. 5925).

(lxxxiii) Conduct and support research programs to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(lxxxiv) Administer grants and conduct research programs to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(lxxxv) Administer grants and conduct research programs to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(lxxxvi) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(lxxxvii) Support and conduct basic and applied research in the development of new commercial products from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(lxxxviii) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(lxxxix) Establish an Agricultural Research Facilities Planning and Closure Study Commission to review currently operating and planned facilities, and to develop recommendations (7 U.S.C. 5927).

(xc) Administer research programs to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(xci) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(xcii) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(xciii) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(xciv) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(xcv) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(xcvi) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(xcvii) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)–(k)).

(xcviii) Coordinate Departmental policies under the Toxic Substance Control Act (15 U.S.C. 2601–2629).

(xcix) Provide educational and technical assistance in implementing and administering the Conservation Reserve Program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509 (16 U.S.C. 3831–3844)).

(c) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(ci) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(cii) Conduct educational and demonstrational work in Cooperative Farm Forestry Programs (16 U.S.C. 568).

(ciii) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry, natural resources, and environmental research (16 U.S.C. 582a–8).

(civ) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(cv) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(cvi) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(cvii) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(cviii) Implement and conduct an educational program to assist the development of Urban and Community Forestry Programs (16 U.S.C. 2105).

(cix) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural activities within the Department (16 U.S.C. 2805).

(cx) Perform research, development, and extension activities in aquaculture (16 U.S.C. 2804 and 2806).

(cxi) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(cxii) Copy and deliver on demand selected articles and other materials from the Department's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976, (17 U.S.C. 106, 107, and 108).

(cxiii) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices or real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(cxv) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(cxvi) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 483(d)(2)).

(cxviii) Conduct research demonstration and promotion activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(cxix) Carry out research, demonstration, and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(cxx) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(cxxii) Provide leadership and direct assistance in planning, conducting and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(cxxiii) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (part 18 of this title).

(cxxiv) Represent the Department on the Federal Interagency Council on Education.

(cxxv) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA.

(cxxvii) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(cxxviii) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(cxxix) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(cxxx) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(cxxxi) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(cxxxii) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(cxxxiii) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(cxxxiv) Represent the Department on the Federal Coordinating Council for Science, Engineering, and Technology.

(cxxxv) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(cxxxvi) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(2) *Related to committee management.* Establish or reestablish regional, state and local advisory committees for the activities authorized. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer the responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning scientific and educational programs; estimates of supplies of agricultural commodities and evaluation of requirements therefor; coordination of damage assessment; food and agricultural aspects of economic stabilization, economic research, and agricultural statistics; and the coordination of energy programs.

(4) *Related to rural development activities.* Provide guidance and direction for the accomplishment of activities authorized under the Rural Development Act of 1972, as amended (7 U.S.C. 1921 *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy aspects thereof with the Under Secretary for Rural Economic and Community Development.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority,

exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(7) *Related to national food and human nutrition research.* (i) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(A) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(B) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(C) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(ii) The authority in paragraph (a)(7)(i) of this section includes the authority to:

(A) Appraise the nutritive content of the U.S. food supply;

(B) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(C) Coordinate nutrition education research projects within the Department; and

(D) Maintain data generated on food composition in a National Nutrient Data Bank.

(iii) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(A) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(B) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(C) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Conduct a program of nutrition education research.

(v) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(8) *Related to economic research and statistical reporting.* (i) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(ii) Conduct economic and social science research and analyses relating to:

(A) food and agriculture situation and outlook;

(B) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(C) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(D) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(E) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(iii) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704).

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 476, 951, and 2204).

(v) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

(vi) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(vii) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(viii) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio, and television.

(ix) Coordinate all economic analysis and review all decisions involving substantial economic policy implications.

(x) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global and agricultural system. Such work may be carried out by:

(A) Exchanging research materials and results with the institutions or persons;

(B) Engaging in joint or coordinated research;

(C) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Secretary of Agriculture;

(D) Stationing representatives at such institutions or organizations in foreign countries; or

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Secretary of Agriculture (7 U.S.C. 3291(a)).

(xi) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect on family farms and rural communities of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(xii) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(xiii) Enter into cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(9) *Related to energy.* (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy and other governmental agencies and departments.

(iii) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(iv) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

(v) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(10) *Related to immigration.* Serve as the designee of the Secretary pursuant to section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 514.44(c)).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.* (i) Withhold funds from States and sending notification thereof to the President in accordance with sections 5 and 6 of the Smith-Lever Act, as amended (7 U.S.C. 345–346), sections 5 and 7 of the Hatch Act, as amended (7 U.S.C. 361 (e) and (g)), and sections 1436, 1444, 1445 and 1468 of the National Agricultural Research, Extension, and Teaching Policy Act of

1977, as amended (7 U.S.C. 3198, 3221, 3222 and 3314).

(ii) Reapportion funds under section 4 and apportion funds under section 5 of the Act of October 10, 1962 (16 U.S.C. 582a–3, 582a–5).

(iii) Appoint an advisory committee under section 6 of the Act of October 10, 1962 (16 U.S.C. 582a–4).

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(v) Approve selection of State directors of extension.

(vi) Approve the memoranda of understanding between the land-grant universities and USDA related to cooperative extension programs.

(2) *Related to economic research and statistical reporting.* (i) Final approval and issuance of the monthly crop report (7 U.S.C. 411a).

(ii) Final action on rules and regulations for the Agricultural Statistics Board.

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs:

(1) *Related to agricultural marketing.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(ii) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(A) Studies of facilities and methods used in physical distribution of food and other farm products;

(B) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(C) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(iii) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(iv) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(v) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(vi) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(vii) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(viii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(B) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(C) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(D) Naval Stores Act (7 U.S.C. 91–99);

(E) Tobacco Inspection Act (7 U.S.C. 511–511q);

(F) Wool Standard Act (7 U.S.C. 415b-415d);

(G) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(I) Export Apple and Pear Act (7 U.S.C. 581–590);

(J) Export Grape and Plum Act (7 U.S.C. 591–599);

(K) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(L) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(M) Produce Agency Act (7 U.S.C. 491–497);

(N) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(O) Tobacco Statistics Act (7 U.S.C. 501–508);

(P) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(Q) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(R) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(S) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(T) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(V) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xi) and (a)(3)(x);

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§ 2.16(a)(1)(xiv) and (a)(3)(x);

(Y) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in

§ 2.16(a)(3)(x);

(Z) Egg Products Inspection Act relating to the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(AA) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(BB) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(CC) In carrying out the procurement functions in paragraphs (a)(1)(viii)(AA) and (BB) of this section, the Assistant Secretary for Marketing and Regulatory Programs shall, to the extent practicable, use the commodity procurement,

handling, payment and related services of the Farm Service Agency;

(DD) Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693);

(EE) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(HH) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(JJ) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(KK) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(LL) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(MM) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(NN) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(QQ) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(RR) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(SS) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(TT) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(ix) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary for Marketing and Regulatory Programs, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(x) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(2) *Related to animal and plant health inspection.* Exercise the functions of the Secretary of Agriculture under the following authorities:

(i) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to represent the Department of Agriculture in interagency consultations and negotiations with other foreign affairs agencies regarding joint regulations, nor the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service;

(ii) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the Gypsy Moth Program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands;

(iii) The Mexican Border Act, as amended (7 U.S.C. 149);

(iv) The Golden Nematode Act (7 U.S.C. 150–150g);

(v) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj);

(vi) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(vii) The Terminal Inspection Act, as amended (7 U.S.C. 166);

(viii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(ix) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656);

(x) Tariff Act of June 17, 1930, as amended, sec. 306 (19 U.S.C. 1306);

(xi) Act of August 30, 1890, as amended (21 U.S.C. 102–105);

(xii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130);

(xiii) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1);

(xiv) Act of June 16, 1948 (21 U.S.C. 114e–114f);

(xv) Act of September 6, 1961 (21 U.S.C. 114g–114h);

(xvi) Act of July 2, 1962 (21 U.S.C. 134–134h);

(xvii) Act of May 6, 1970 (21 U.S.C. 135–135b);

(xviii) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618);

(xix) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429);

(xx) The responsibilities of the United States under the International Plant Protection Convention;

(xxi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(xxii) Horse Protection Act (15 U.S.C. 1821–1831);

(xxiii) 28 Hour Law, as amended (49 U.S.C. 80502);

(xxiv) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(xxv) Purebred Animal Duty Free Entry Provisions of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01);

(xxvi) Virus-Serum-Toxin Act (21 U.S.C. 151–158);

(xxvii) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a);

(xxviii) The Agricultural Marketing Act of 1946, sections 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine;

(xxix) Talmadge Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xxx) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814);

(xxxi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xxxii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xxxiii) Section 101(d), Organic Act of 1944 (7 U.S.C. 430);

(xxxiv) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xxxv) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxxvi) Title III (and title IV to the extent that it relates to activities under title III,) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610);

(xxxvii) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260);

(xxxviii) The Act of March 2, 1931 (7 U.S.C. 426–426b);

(xxxix) The Act of December 22, 1987 (7 U.S.C. 426c);

(xl) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3));

(xli) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended;

(xlii) The provisions of 35 U.S.C. 156;

(xliii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c); and

(xliv) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(3) *Related to grain inspection, packers and stockyards.*

(i) Exercise the authority of the Secretary of Agriculture contained in the U.S. Grain Standards Act, as amended (7 U.S.C. 71–87h).

(ii) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities relating to grain.

(iii) Administer the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229).

(iv) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1655, 1681–1681t) with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(v) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(6) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and governmental and private organizations. Provided, that with respect to biotechnology matters affecting egg products, the Assistant Secretary shall consult and coordinate activities of Department agencies with the Under Secretary for Food Safety.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but

excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(9) *Related to the Capper-Volstead Act.* Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Relating to agricultural marketing.

(i) Promulgation, with the Secretary of the Treasury of joint regulations under section 402(b) of the Federal Seed Act, as amended (7 U.S.C. 1592(b)).

(ii) Appoint members of the National Dairy Promotion and Research Board established by section 113(b) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists because of the outbreak of any dangerous, communicable disease of livestock or poultry anywhere in the United States and that such outbreak threatens the livestock or poultry of the United States (21 U.S.C. 114a, 114c, 134a(b)).

(ii) Determination as to the measure and character of cooperation with Canada, Mexico, Central American countries, Panama, and Columbia related to operations and measures to eradicate, suppress, or control or to prevent or retard any communicable disease of animals, the designation of members of advisory committees, and the appointment of commissioners on any joint commission with these governments set up under such programs (21 U.S.C. 114b).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 665).

(iv) Determination that an extraordinary emergency exists under the criteria in section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

(1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.

(ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(2) *Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(A) National Association of State Departments of Agriculture;

(B) Office of Intergovernmental Relations (Office of Vice President);

(C) Advisory Commission on Intergovernmental Relations;

(D) Council of State Governments;

(E) National Governors Conference;

(F) National Association of Counties;

(G) National League of Cities;

(H) International City Managers Association;

(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(3) *Related to Indian affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

(1) *Related to administrative law judges.* (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.

(ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the

original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings;

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings;

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service;

(D) Keeping a docket record of all such documents and proceedings;

(E) Filing a stenographic record of each administrative hearing;

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office;

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed;

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment;

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations; and

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place; and

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(2) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(A) Assess and improve productivity of the Department; and

(B) Assist agencies in developing, implementing and maintaining productivity measurement systems.

(ii) Responsible for the Modernization of Administrative Processes project to analyze and make recommendations to the Secretary regarding improved processes with respect to administrative and financial activities of the Department.

(iii) Designate the Department's Chief Management Improvement Officer.

(iv) Improve Departmental management by: Performing management studies and reviews in response to agency requests for assistance; enhancing management decisionmaking by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(v) Administer the Department's Management Improvement Program including the provision of assistance to agencies through management studies and planning review; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness and operation of the Department's programs.

(vi) Administer the Department's Management Review Program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(vii) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(3) *Related to operations.* (i) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(B) Socioeconomic programs relating to contracting, except matters otherwise assigned;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(E) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(F) Mail management;

(G) Motor vehicle fleet and other vehicular transportation;

(H) Transportation of things (traffic management);

(I) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(J) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and

(K) Develop and implement energy management actions related to the internal operations of the Department. Maintain liaison with other government agencies in these matters.

(ii) Operate, or provide for the operation of, centralized Departmental services for printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(iii) Exercise the following special authorities:

(A) Designate the Department's Debarring Officer to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(B) Conduct liaison with the Office of the Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection of historical material for Presidential Libraries;

(F) Oversee the safeguarding of unclassified materials designated ''For Official Use Only;''

(G) Make determinations under 48 CFR 14.406–3 (a) through (d), relating to mistakes in bids alleged after opening of bids and before award; and

(H) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election by 26 CFR 1.6050M–1(d)(5)(i).

(iv) Exercise full Departmentwide contracting and procurement authority

for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies. This includes the promulgation of Department directives regulating the management or related contracting and procurement functions.

(v) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(vi) Represent the Department in contacts with the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(vii) Serve as the Acquisition Executive in USDA to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(A) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition;

(C) Designate the program manager for each major system acquisition; and

(D) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(viii) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, designate a Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the procurement work force;

(G) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(H) Determining areas of Department-unique standards and developing unique Department-wide standards;

(I) Certifying to the Secretary that the procurement system meets approved standards;

(J) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(K) Redelegating, as appropriate, the authority in paragraph (a)(3)(viii)(A) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(L) Redelegating the authorities in paragraphs (a)(3)(viii) (B), (C), (D), (F) and (G) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(ix) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(x) Review and approve exemptions for Department of Agriculture contracts, subcontracts, grants, subgrants, agreements, subagreements, loans and subloans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in the above acts and Executive Order and the regulations of the Environmental Protection Act (40 CFR 15.5(c)).

(4) *Related to management services.* (i) Provide management support services for the Secretary of Agriculture and for the general officers of the Department, except the Inspector General. As used herein, such management support services shall include:

(A) Personnel services, as listed in paragraph (a)(5)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services;

(B) Procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services; and

(C) Automation, forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(ii) Provide such services as listed in paragraph (a)(4)(i) of this section, as may be agreed, for other officers and agencies of the Department.

(5) *Related to personnel.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to personnel.

(ii) Provide personnel management procedural guidance and operational instructions.

(iii) Design and establish personnel data systems.

(iv) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in personnel matters.

(vii) Represent the Department in personnel matters in all contacts outside the Department.

(viii) Exercise specific authorities in the following operational matters:

(A) Authorize cash awards above $2,500;

(B) Waive repayment of training expenses where employee fails to fulfill service agreement;

(C) Establish or change standards and plans for awards to private citizens; and

(D) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements; and

(*2*) Association of Management Officials or Supervisor's Agreements.

(E) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(F) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(G) Grant restoration rights, and release employees with administrative reemployment rights;

(H) Change working hours for groups of 50 or more employees in the Washington, DC, metropolitan area;

(I) Authorize any mass dismissals of employees in the Washington, DC, metropolitan area;

(J) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in-grade criteria;

(K) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(*1*) Was involved directly in the adverse action, or performance rating appeal; or

(*2*) Made the informal decision; or

(*3*) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(L) Make the final decision on all classification appeals from agency appellate decisions;

(M) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(N) Authorize all employment actions (except LWOP) for the following positions:

(*1*) Schedule C; and

(*2*) Administrative law judge.

(O) Authorize employment actions (accessions or extensions) for the following:

(*1*) Employees whose records are flagged; and

(*2*) Contract services.

(P) Authorize employment actions (accessions or extensions and transfers) for the following:

(*1*) Persons with criminal or immoral records;

(*2*) Persons separated for misconduct, delinquency, or resignation, to avoid such action; and

(*3*) Veterans with dishonorable or other than dishonorable discharge.

(Q) Authorize adverse actions for positions in GS–14–15 and equivalent;

(R) Approve assignments of White House details;

(S) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(T) Authorize long-term training in programs which require Department-wide competition;

(U) Issue all Coordinated Federal Wage System (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, DC metropolitan area; and

(V) Initiate and take adverse action in cases involving a violation of the merit system.

(ix) [Reserved]

(x) As used herein, the term personnel includes:

(A) Position management;

(B) Position classification;

(C) Employment;

(D) Pay administration;

(E) Automation of personnel data and systems design;

(F) Hours of duty;

(G) Performance evaluation and standards;

(H) Promotions;

(I) Employee development;

(J) Incentive Programs;

(K) Leave;

(L) Retirement;

(M) Program evaluation;

(N) Social security;

(O) Life insurance;

(P) Health benefits;

(Q) Unemployment compensation;

(R) Labor management relations;

(S) Intramanagement consultation;

(T) Security;

(U) Discipline; and

(V) Appeals.

(xi) The provisions of paragraphs (a)(5)(x)(N) through (R) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(xii) Maintain, review and update departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(*1*) Service or office;

(*2*) Division (or comparable component); and

(*3*) Branch (or comparable component in departmental centers, only).

(B) Field organizations:

(*1*) First organizational level; and

(*2*) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental Regulation 1010–1 (see § 2.92(a)(15)(ii)(B)).

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(xviii) Determine and/or provide Departmentwide technical services and regional staff support for the Safety and Health Programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's Occupational Safety and Health Programs.

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(xxiii) Approve hazard pay differentials under the conditions specified in 5 CFR part 550.

(6) *Related to information resources management*. (i) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This designation includes the following responsibilities:

(A) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(B) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities;

(C) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department;

(D) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs;

(E) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759);

(F) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), including

the review of Department information activities; and

(G) Reviewing, granting, and notifying Congress of waivers to Federal Information Processing Standards pursuant to the authority delegated under section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(ii) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(iii) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(iv) Provide Departmentwide guidance and direction in all aspects of the USDA Information Management Program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(v) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(vi) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(vii) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(viii) Administer the Departmental records, forms, reports, and Directives Management Programs.

(ix) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(x) Implement a program for applying information resources management technology to improve productivity in the Department.

(xi) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(xii) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(xiii) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xiv) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(xv) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(7) *Related to committee management.* (i) Serve as the Department's Committee Management Officer and establish and maintain departmentwide policies and procedures for the management of committees. This delegation includes the authority to:

(A) Consult with the Committee Management Secretariat prior to the establishment or reestablishment of advisory committees;

(B) Approve and sign the written certification that creation of the advisory committee is in the public interest and provide for the publication of such certification in the Federal Register, along with a description of the nature and purpose of the advisory committee, following the Committee Management Secretariat's approval of the establishment of the committee;

(C) Approve and sign the notice of renewal of advisory committees for publication in the Federal Register, following the Committee Management Secretariat's concurrence in the renewal of the committees;

(D) Assign responsibility for preparation of timely notice of meetings for publication in the Federal Register; and

(E) Approve charters for national advisory committees when in a format other than a Secretary's Memorandum.

(ii) Establish and reestablish regional, State, and local advisory committees for activities authorized. This authority may not be redelegated.

(8) *Related to equal opportunity.* (i) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(A) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(D) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(E) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(F) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(G) Actions to develop and implement the Department's Federal Women's Program; and

(H) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(vi) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(vii) Order proceedings and hearings in the USDA pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(viii) Order proceedings and hearings in the USDA pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(ix) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(xi) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations and make final determinations, on both the merits and required corrective action, as to complaints filed under subpart B of part 15 of this title.

(xiii) Conduct investigations and compliance reviews Departmentwide.

(xiv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xv) Provide liaison on Equal Employment Opportunity Programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(xvi) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xvii) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1613, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, and the authority to make decisions on complaints of discrimination and order such corrective measures as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xviii) Administer the Department's Equal Employment Opportunity Program.

(xix) Perform the EEO counseling function for the Department.

(xx) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(xxi) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, Office of Personnel Management or other outside authority.

(xxii) Provide liaison on EEO matters concerning complaints and appeals with the USDA agencies and Department employees.

(xxiii) Maintain liaison with historically black colleges and universities and with other colleges and universities with substantial minority group enrollment, and assist USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxiv) Investigate USDA EEO complaints with authority to enter into and administer contracts for such investigations.

(xxv) Make final decisions on complaints and grievance appeals, except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(xxvi) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(A) Was involved directly in the grievance; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xxvii) The provisions of paragraphs (a)(8)(xxv) and (xxvi) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(9) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(10) *Related to board of contract appeals.* Provide administrative supervision, and exercise general responsibility for budget and finance aspects of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(11) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and

wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(13) *Related to emergency programs.* (i) Coordinate the Departments Emergency Preparedness Program and Disaster Emergency Response Program including maintenance of an appropriate system whereby the Department can react immediately when notified of a civil defense or natural disaster emergency.

(ii) Maintain an overview of emergency relocation facilities and assure that resources are in a constant state of readiness.

(iii) Direct the entire defense program of USDA. This delegation includes:

(A) Maintaining liaison with executive departments and the Congress with respect to policy matters;

(B) Supervising and directing USDA regional emergency stalls and USDA State and county emergency boards;

(C) Directing the USDA part of the National Defense Executive Reserve Program;

(D) Providing policy guidance to USDA agencies in carrying out specific defense assignments; and

(E) Representing the Department in matters relating to international defense organizations, such as NATO and its suborganizations.

(iv) Coordinate and facilitate USDA operations of Natural Disaster Programs, including liaison with executive departments and the Congress in disaster matters.

(v) Maintain liaison with:

(A) Federal Preparedness Agency; and

(B) Defense Civil Preparedness Agency.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to personnel.* Make final determinations in the following areas:

(i) Separation of employees for security reasons.

(ii) Restoration to duty of employees following suspension from duty for security reasons.

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons.

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

§ 2.26 Director, Office of the Executive Secretariat.

The following delegation of authority is made by the Secretary of Agriculture to the Director, Office of the Executive Secretariat: Responsible for all correspondence control and related records management functions for the Office of the Secretary.

§ 2.27 Office of Administrative Law Judges.

(a) The following designations are made by the Secretary of Agriculture to the Office of Administrative Law Judges:

(1) Administrative law judges (formerly hearing examiners) are designated pursuant to 5 U.S.C. 556(b)(3) to hold hearings and perform related duties in proceedings subject to 5 U.S.C. 556 and 557, arising under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*); the Commodity Exchange Act as amended (7 U.S.C. 1 *et seq.*); the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a *et seq.*); the Federal Seed Act, as amended (7 U.S.C. 1551 *et seq.*); the (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131 *et seq.*); the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*); the Forest Resources Conservation and Shortage Relief of 1990 (16 U.S.C. 630 *et seq.*); and any other acts providing for

hearings to which the provisions of 5 U.S.C. 556 and 557, are applicable. Pursuant to the applicable rules of practice, the administrative law judges shall make initial decisions in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Such decisions shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with the applicable rules of practice: Provided, however, that no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. As used herein, ''Secretary'' means the Secretary of Agriculture, the Judicial Officer, or other officer or employee of the Department delegated, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), ''regulatory functions'' as that term is defined in the 1940 Act, in acting as final deciding officer in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Administrative Law Judges are delegated authority to hold hearings and perform related duties as provided in the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, set forth in part 1, subpart I of this title.

(2) [Reserved]

(b) The Chief Administrative Law Judge is delegated the following administrative responsibilities subject to the guidance and control of the Assistant Secretary for Administration (See § 2.24(a)):

(1) Exercise general responsibility and authority for all matters related to the administrative activities of the Office of Administrative Law Judges; and

(2) Direct the functions of the Hearing Clerk as set out in § 2.24(a)(1)(iii).

§ 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(1) Reporting directly to the Secretary of Agriculture regarding financial management matters and the financial execution of the budget.

(2) Overseeing all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Developing and maintaining an integrated accounting and financial system for the Department and component agencies, including financial reporting and internal controls, which—

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards;

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget;

(iii) Complies with any other requirements applicable to such systems; and

(iv) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(4) Making recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, and selection of principal financial officers of component agencies of the Department.

(5) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Preparing and annually revising a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget under 31 U.S.C. 3512(a)(3); and

(B) Comply with the requirements established for agency financial statements under 31 U.S.C. 3515 and with the requirements for audits of Department financial statements established in 31 U.S.C. 3521(e) and (f).

(ii) Developing Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets;

(iii) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions;

(iv) Approving and managing Departmental, and approving component agency, financial management systems design or enhancement projects; and

(v) Implementing and approving Departmental, and approving component agency, asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(6) Preparing and transmitting, by not later than 60 days after the submission of the audit report required by 31 U.S.C. 3521(f), an annual report to the Secretary and the Director of the Office of Management and Budget, which shall include:

(i) A description and analysis of the status of financial management of the Department;

(ii) The annual financial statements prepared under 31 U.S.C. 3521;

(iii) The audit report transmitted to the Secretary under 31 U.S.C. 3521;

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 1113, 3512); and

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitoring the financial execution of the budget of the Department in relation to projected and actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(8) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Accessing all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

(10) Requesting such information or assistance as may be necessary for carrying out the duties and responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 (Pub. L. No. 101–576), from any Federal, State, or local governmental entity.

(11) To the extent and in such amounts as may be provided in advance by appropriations acts, entering into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

(b) In addition to the above responsibilities, the following delegations of authority are made by the Secretary of Agriculture to the Chief Financial Officer:

(1) Designate the Department's Director of Finance and Comptroller of the Department Working Capital Fund.

(2) Establish Departmental policies, standards, techniques, and procedures applicable to all USDA agencies for the following areas:

(i) Development, maintenance, review and approval of all departmental, and review and approval of component agency, internal control, fiscal, financial management and accounting systems including the financial aspects of payroll and property systems;

(ii) Selection, standardization, and simplification of program delivery processes utilizing grants, cooperative agreements and other forms of Federal assistance;

(iii) Review and approval of Federal assistance, internal control, fiscal, accounting and financial management regulations and instructions proposed or issued by USDA agencies for conformity with Departmental requirements; and

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(3) Establish policies related to the Department Working Capital Fund.

(4) Approve regulations, procedures and rates for goods and services financed through the Department Working Capital Fund which will impact the financial administration of the Fund.

(5) Exercise responsibility and authority for operating USDA's Central Accounting System and related administrative systems including:

(i) Management of the National Finance Center (NFC), which includes developing, maintaining, and operating manual and automated administrative and accounting systems for the USDA agencies related to the Central Accounting System, Departmentwide payroll and personnel information, statistics, administrative payments, billings and collections, and related reporting systems that are either requested by the agencies or required by the Department;

(ii) Management of the NFC automated data processing and telecommunications systems and coordination with the Office of Information Resources Management to assure that the hardware and software located at the NFC will be integrated with and compatible with all other systems;

(iii) Develop new or modified accounting systems and documentation supporting the Central Accounting System which includes working with USDA agencies to obtain General Accounting Office approval; and

(iv) Review and approve the issuance of accounting and management instructions related to the operation of the NFC.

(6) Provide management support services for the NFC, and by agreement with agency heads concerned, provide such services for other USDA tenants housed in the same facility. As used herein, such management support services shall include:

(i) Personnel services, as listed in § 2.24(a)(5)(x), and organizational support services, with authority to take actions required by law or regulation to perform such services; and

(ii) Procurement, property management, space management, communications, messenger, paperwork management, and related administrative services, with authority to take actions required by law or regulation to perform such services.

(7) Exercise responsibility and authority for all matters related to the Department's accounting and financial operations including such activities as:

(i) Financial administration, including accounting and related activities;

(ii) Reviewing financial aspects of agency operations and proposals;

(iii) Furnishing consulting services to agencies to assist them in developing and maintaining accounting and financial management systems and internal controls, and for other purposes consistent with delegations in paragraph (b)(2) of this section;

(iv) Reviewing and monitoring agency implementation of Federal assistance policies;

(v) Reviewing and approving agencies' accounting systems documentation including related development plans, activities, and controls;

(vi) Monitoring agencies' progress in developing and revising accounting and financial management systems and internal controls;

(vii) Evaluating agencies' financial systems to determine the effectiveness of procedures employed, compliance with regulations, and the appropriateness of policies and practices;

(viii) Promulgation of Department schedule of fees and charges for reproductions, furnishing of copies and making searches for official records pursuant to the Freedom of Information Act, 5 U.S.C. 552; and

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(8) Establish Department and approve component agency programs, policies, standards, systems, techniques and procedures to improve the management and operational efficiency and effectiveness of the USDA including:

(i) Implementation of the policies and procedures set forth in OMB Circulars No. A–76: Performance of Commercial Activities, and No. A–117: Management Improvement and the Use of Evaluation in the Executive Branch;

(ii) Increased use of operations research and management science in the areas of productivity and management; and

(iii) All activities financed through the Department Working Capital Fund.

(9) Designate the Commercial Industrial Officer for USDA.

(10) Develop Departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of State and local governments, other Federal agencies and of the private sector in domestic program operations.

(11) Represent the Department in contacts with the Office of Management and Budget, General Services Administration, General Accounting Office, Department of the Treasury, Office of Personnel Management, Department of Health and Human Services, Department of Labor, Environmental Protection Agency, Department of Commerce, Congress of the United States, State and local governments, universities, and other public and private sector individuals, organizations or agencies on matters related to assigned responsibilities.

(12) Maintain the Departmental inventory of commercial activities required by OMB Circular No. A–76 and provide Departmentwide technical assistance to accomplish Circular objectives.

(13) Establish policies related to travel by USDA employees.

(14) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Pub. L. No. 103–62, at the Department.

(15) Exercise responsibility for design, implementation, and oversight of the Department's project known as Financial Information Systems Vision, and approval of the design and implementation of an integrated financial information and management system for the Department and all component agencies.

(16) Provide budget, accounting, fiscal and related financial management services, with authority to take action

required by law or regulation to provide such services for Working Capital Funds and general appropriated and trust funds for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Any other officers and agencies of the Department as may be agreed.

§ 2.29 Chief Economist.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

(1) *Related to economic analysis.* (i) Coordinate economic analyses of, and review Department decisions involving, policies and programs that have substantial economic implications.

(ii) Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

(iii) Review economic data and analyses used in speeches and Congressional testimony by Department personnel and in materials prepared for release through the press, radio, and television.

(2) *Related to risk assessment.* (i) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the Federal Register as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(ii) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(3) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(4) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(5) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(6) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(7) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(8) *Related to agricultural labor affairs.* Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101 *et seq.*):

(i) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as ''H–2A'' workers, under 8 U.S.C. 1101(a)(15)(H)(ii)(a);

(ii) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement 8 U.S.C. 101(a)(15)(H)(ii)(a) and 1188 providing for the importation of H–2A workers;

(iii) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), promulgate regulations to define ''seasonal agricultural services'' for purposes of the Special Agricultural Worker (SAW) Program;

(iv) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as ''replenishment agricultural workers'' (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year;

(v) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), determine jointly with the Secretary of Labor emergency requests to increase the shortage number;

(vi) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), determine jointly with the Secretary of Labor requests to decrease the number of man-days of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section 210A(d)(5) (A) and (B) of the INA (8 U.S.C. 1161(d)(5) (A) and (B));

(vii) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and

(viii) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), establish jointly with the Secretary of Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

(9) *Related to the Capper-Volstead Act.* Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

(10) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

§ 2.30 Director, Office of Budget and Program Analysis.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

(1) Serve as the Department's Budget Officer and exercise general responsibility and authority for all matters related to the Department's budgeting affairs including:

(i) Resource administration, including all phases of the acquisition, and distribution of funds and staff years; and

(ii) Legislative and regulatory reporting and related activities.

(2) Provide staff assistance for the Secretary, general officers, and other Department and agency officials.

(3) Formulate and promulgate Departmental budgetary, legislative and regulatory policies and procedures.

(4) Represent the Department in contacts with the Office of Management and Budget, the General Accounting Office, the Treasury Department, Congressional Committees on Appropriations, and other organizations and agencies on matters related to his or her responsibility.

(5) Coordinate and/or conduct policy and program analyses on agency operations and proposals to assist the Secretary, general officers and other Department and agency officials in formulating and implementing USDA policies and programs.

(6) Review and analyze legislation, regulations, and policy options to determine their impact on USDA programs and policy objectives and on the Department's budget.

(7) Monitor ongoing studies with significant program or policy implications.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

§ 2.31 General Counsel.

The General Counsel, as the chief law officer of the Department, is legal adviser to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14.

(b) Certify documents as true copies of those on file in the Department.

(c) Sign releases of claims of the United States against private persons for damage to or destruction of property of the department, except those claims cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*).

(d) Responsible for the overall management and operation of the Law Library, furnishing complete legal and legislative library services to the Office of the General Counsel and the Department.

(e) Make determinations as to whether employees of the Department may retain commercial rights in inventions; prepare patent applications and prosecute the same before the Patent Office.

(f) Represent the Department in formal rulemaking and adjudicatory proceedings held in connection with the administration of the Department's activities, and decide whether initial decisions of the administrative law judges shall be appealed by the Department to the Secretary.

(g) Represent the Department in connection with legal issues that arise in its relations with the Congress, the General Accounting Office, or other agencies of the Government.

(h) Represent the Department in proceedings before the Interstate Commerce Commission involving freight rates on farm commodities, and in appeals from decisions of the Commission to the courts.

(i) In civil actions arising out of the activities of the Department, present the Department's case to the Attorney General and U.S. attorneys and, upon request of the Department of Justice, assist in the preparation and trial of such cases and in the briefing and argument of such cases at the appellate level.

(j) Review cases having criminal aspects and refer them to the Department of Justice.

(k) Act as liaison between the Department and the Department of Justice.

(l) Perform the following legal services:

(1) Render legal opinions on questions arising in the conduct of the Department's activities;

(2) Prepare or review regulations;

(3) Draft proposed legislation;

(4) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(5) Examine titles to land to be acquired or accepted as security for loans.

(m) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(n) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(o) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

§ 2.32 Alternative Agricultural Research and Commercialization Board.

The following delegation of authority is made by the Secretary of Agriculture to the Alternative Agricultural Research and Commercialization Board: Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

§ 2.33 Inspector General.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) Provide for the personal security of the Secretary and the Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. App.

(b) The following authority is reserved to the Secretary of Agriculture: Approving the implementation in the Office of Inspector General of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

§ 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, title II (7 U.S.C. 6991 *et seq.*), including:

(a) Deciding appeals from adverse decisions, made by an officer or employee of an agency of the Department designated by the Secretary, that are adverse to participants. The term ''agency'' shall include the following and any predecessor agency: the Farm Service Agency; the Commodity Credit Corporation (with respect to domestic programs); the Federal Crop Insurance Corporation; the Rural Housing and Community Development Service; the Rural Business and Cooperative Development Service; the Natural Resources Conservation Service; and a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and

(b) The authority to appoint such hearing officers and other employees as are necessary for the administration of the activities of the Division.

§ 2.35 Judicial Officer.

The following delegations of authority are made by the Secretary of Agriculture to the Judicial Officer: Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), the Judicial Officer is hereby authorized to act as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made subject to the ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes'' set forth in part 1, subpart H of this title; in adjudication proceedings under the ''Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act'' set forth in part 1, subpart I of this title; in rate proceedings under the Packers and Stockyards Act; in adjudication proceedings under the ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986'' set forth in part 1, subpart L of this title; in adjudication proceedings subject to the ''Rules of Practice Governing the Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)'' set forth in part 1, subpart M of this title; and in reparation proceedings under statutes administered by the Department. As used herein the term ''Judicial Officer'' shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of this delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him or her.

§ 2.36 Director, Office of Communications.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to Director, Office of Communications:

(1) *Related to public affairs.* (i) Advise and counsel general officers on public affairs matters to the Department.

(ii) Organize and direct the activities of a public affairs office to include press relations of the secretary of agriculture and other executive functions and services for general officers of the Department.

(2) *Related to information activities.* (i) Advise the secretary and general officers in the planning, development, and execution of Department policies and programs.

(ii) Direct and coordinate the overall formulation and development of policies, programs, plans, procedures, standards and organization structures and staffing patterns for the information activities of the Department and its agencies, both in Washington and in the field.

(iii) Exercise final review and approval of all public information material prepared by the Department and its agencies and select the most effective method and audience for distributing this information.

(iv) Serve as the central public information authority in the USDA, with the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so that all material shall effectively support USDA policies and programs, including the defense program.

(v) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

(vi) Cooperate with and secure the cooperation of commercial, industrial and other nongovernmental agencies and concerns regarding information work as required in the execution of the Department's programs.

(vii) Plan and direct communication research and training for the Department and its agencies.

(viii) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the ''Freedom of Information Act'' (5 U.S.C. 552) and the ''Privacy Act'' (5 U.S.C. 552a), and provide consultation regarding those policies.

(ix) Supervise and provide leadership and final clearance for the planning, production, and distribution of visual information material for the department and its agencies in Washington, D.C., and the field, and provide such information services as may be deemed necessary.

(x) Maintain overall responsibility and control over the preparation of the ''Agricultural Decisions.''

(xi) Administer, direct and coordinate publications and user fee authority granted under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a; and publish any appropriate regulations necessary to the exercise of this authority.

(b) [Reserved]

Subpart E—Delegations of Authority by the Deputy Secretary

§ 2.37 Director, Office of Small and Disadvantaged Business Utilization

(a) *Delegations.* Pursuant to § 2.15, the following delegations of authority are

made by the Deputy Secretary to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Deputy Secretary, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority business, including women-owned business, Labor Surplus Area concerns, and the small business and small minority business subcontracting programs;

(ii) Providing Departmentwide liaison and coordination of activities related to small and disadvantaged business with the Small Business Administration and others in the public and private sector;

(iii) Developing policies and procedures required by the applicable provisions of the Small Business Act, as amended to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(2) In addition to the responsibilities in paragraph (a)(1) of this section, the following delegations of authority are made by the Deputy Secretary of Agriculture to the Director, Office of Small and Disadvantaged Business Utilization:

(i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401 *et seq.*), is designated as the Department's Advocate for Competition with responsibility for sections 20 and 21 of the Act (41 U.S.C. 418 and 418a), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Designating an Advocate for Competition for each procuring activity within the Department; and

(F) Preparing the annual report to the Congress for transmittal by the Secretary on activities of the Advocate for Competition.

(b) [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.

Pursuant to § 2.16(a), subject to reservations in § 2.16(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Farm and Foreign Agricultural Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

§ 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) through (a)(4) and (a)(6) through (a)(8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Farm Service Agency:

(1) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(2) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*), except the provisions of section 416(a)(1), (a)(2) and (b) of the Agricultural Act of 1949, as amended, unless specifically provided herein.

(3) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(i) Clearing photography projects;

(ii) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(iii) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(iv) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(v) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction;

(vi) Providing a Chairperson for the Photography Sales Committee of the Department;

(vii) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(viii) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(ix) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(x) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(4) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(5) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural production; food processing, storage, and distribution of farm equipment and fertilizers. rehabilitation and use of feed, agricultural and related agribusiness facilities; and farm credit and financial assistance.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(7) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.43 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(8) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(9) Supervise and direct Farm Service Agency State and county offices and designate functions to be performed by Farm Service Agency State and county committees.

(10) Administer the Dairy Indemnity Program under the Act of August 13, 1968, as amended (7 U.S.C. 450j *et seq.*).

(11) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture

Act of 1965, as amended (7 U.S.C. 1446a-1), except as delegated to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19 and to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3), and assist the Food and Consumer Service and the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751 *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*), and payment and related services with respect to export programs and barter operations.

(13) Administer Wool and Mohair Programs under the National Wool Act of 1954, as amended (7 U.S.C. 1781 *et seq.*), and, in accordance with section 708 of that Act (7 U.S.C. 1787), conduct referenda, withhold funds (for advertising and promotion) from payments made to producers under section 704 of that Act (7 U.S.C. 1783), and transfer such funds to the person or agency designated by the Assistant Secretary for Marketing and Regulatory Programs.

(14) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*) except those functions delegated in § 2.21(a)(8)(xi).

(15) Administer energy management activities as assigned.

(16) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(17) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(18) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(19) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(20) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(21) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(22) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(23) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(24) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(25) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(26) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(27) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(28) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) except for the authority contained in the following sections:

(i) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(ii) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(iii) Section 306A (7 U.S.C. 1926a) and Section 306B (7 U.S.C. 1926b), relating to the Emergency Community Water Assistance Grant Programs;

(iv) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(vii) Section 310B (7 U.S.C. 1932), regarding rural industrialization assistance;

(viii) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(ix) Section 342 (7 U.S.C. 1013a);

(x) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(xi) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business and Cooperative Development Service, and Rural Housing and Community Development Service activities.

(29) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(30) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(31) Make grants and enter into contracts and other agreements to provide outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279.

(32) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(33) Administer the emergency loan and guarantee programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(34) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(35) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(36) Service, collect, settle, and liquidate:

(i) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(ii) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(iii) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(37) Administer loans to Indian tribes and tribal corporations (25 U.S.C. 488–492).

(38) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*).

(39) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(40) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(41) Provide supervision of the Federal Crop Insurance Corporation.

(42) Administer the provisions concerning the end-use certificate system authorized pursuant to section 301(f) of the North American Free Trade Implementation Act (19 U.S.C. 3391(f)).

(43) Determine the type and quantity of commodities that are available for programming under section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), and the Food for Progress Act of 1985 (7 U.S.C. 1736o), and charge for the processing, packaging, transportation, handling and delivery to port of such commodities in connection therewith.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm and Foreign Agricultural Services:

(1) Designating counties and areas for emergency programs under Pub. L. No. 85–58, as amended.

(2) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929).

§ 2.43 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to § 2.16 (a)(3) and (a)(6), subject to reservations in § 2.16(b)(2), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services to the Administrator, Foreign Agricultural Service:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development and other departments, agencies and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to GATT, WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act (except the provisions concerning the end-use certificate system authorized pursuant to section 321(f) of that Act (19 U.S.C. 3391(f)) delegated to the Administrator, Farm Service Agency), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(4) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Assistant Secretary for Marketing and Regulatory Programs.

(5) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(6) Administer functions of the Department relating to import controls including, among others, functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) but not including those functions reserved to the Secretary under § 2.16(b)(2) and those relating to section 8e of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Regulatory Programs.

(7) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under § 2.16(b)(2).

(8) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such agreement.

(9) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(10) Conduct economic analyses pertaining to the foreign sugar situation.

(11) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(12) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(13) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(14) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(15) Formulate policies and administer barter programs under which agricultural commodities are exported.

(16) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*).

(17) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and to represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(19) Formulate policies and implement a program for the export sales of dairy products, as authorized by

section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(20) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(21) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(22) Allocate among the various export programs agricultural commodities determined under § 2.16(a)(3)(xix) to be available for export.

(23) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Cotton Research and Promotion Act (7 U.S.C. 2102–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); and the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(25) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(26) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated in § 2.80(a)(1), but including authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign agencies with respect to joint regulations and authority to approve regulations issued by the Department of State relating to the administration of the Foreign Service.

(27) Establish and maintain U.S. Agricultural Trade Offices to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Pub. L. No. 95–501 (7 U.S.C. 1765a–g).

(28) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in § 2.42(a)(43).

(29) Administer section 214 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 509).

(30) Administer section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958).

(31) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(32) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish International Scientific and Technical Cooperation in Food and Agriculture.

(33) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(34) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

(35) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(36) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201 and 2202).

(37) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(38) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(39) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(40) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(41) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(42) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) [Reserved]

Subpart G—Delegations of Authority by the Under Secretary for Rural Economic and Community Development

§ 2.45 Deputy Under Secretary for Rural Economic and Community Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Rural Economic and Community Development, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Economic and Community Development.

§ 2.47 Administrator, Rural Utilities Service.

(a) *Delegations.* Pursuant to §§ 2.17 (a)(14) and (a)(16) through (a)(20), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Utilities Service:

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*) except for rural economic development loan and grant programs (7 U.S.C. 940c and 950aa, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(2) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(3) The Administrator, Rural Utilities Service is designated to serve as the chief executive officer of the Rural Telephone Bank.

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities;

(ii) Section 306A (7 U.S.C. 1926a);

(iii) Section 306B (7 U.S.C. 1926b);

(iv) Section 306C (7 U.S.C. 1926c);

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(vii) Section 310B(b) (7 U.S.C. 1932(b));

(viii) Section 310B(i)), relating to loans for business telecommunications partnerships;

(ix) Section 342 (7 U.S.C. 1013a); and

(x) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities;

(5) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(6) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(7) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(8) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service or its predecessor agencies.

(9) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Utilities Service.

(10) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(13) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).

(14) Administer water and waste facility programs and activities (7 U.S.C. 1926–1).

(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development:

(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

§ 2.48 Administrator, Rural Business and Cooperative Development Service.

(a) *Delegations.* Pursuant to § 2.17 (a)(1), (a)(2), (a)(14), (a)(16) through (a)(19) and (a)(21), subject to reservations in § 2.17(b)(1), and subject to policy guidance and direction by the Under Secretary for Rural Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Business and Cooperative Development Service:

(1) Administer the rural economic development loan and grant programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).

(2) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(i) Section 306(a)(11)(A) (7 U.S.C. 1926(a)(11)(A)), related grants for business technical assistance and planning;

(ii) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(iii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(iv) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(v) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business and Cooperative Development Service activities;

(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).

(4) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(5) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(6) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620).

(7) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(8) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(9) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(10) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).

(11) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(12) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(13) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(i) Exchanging materials and results with such institutions or organizations;

(ii) Engaging in joint or coordinated activities; or

(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(14) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Business and Cooperative Development Service or its predecessor agencies.

(15) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Business and Cooperative Development Service.

(16) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.

(17) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(18) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(19) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. No. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*).

(20) Provide leadership and coordination within the executive branch at the state and local level of Federal rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(21) Coordinate, at the state and local level, activities relative to rural development among agencies reporting to the Under Secretary for Rural Economic and Community Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities, in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(22) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(23) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(24) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(25) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(26) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program contact (7 U.S.C. 2204; 7 U.S.C. 2204b).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

§ 2.49 Administrator, Rural Housing and Community Development Service.

(a) *Delegations.* Pursuant to § 2.17(a)(14), (a)(16) through (a)(19) and (a)(22), and subject to policy guidance and directions by the Under Secretary for Rural Economic and Community Development, the following delegations are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Housing and Community Development Service:

(1) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(i) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11);

(ii) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(iii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural

Housing and Community Development Service activities;

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(3) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(4) Administer the rural housing disaster program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(5) Collect, service, and liquidate loans made, insured or guaranteed by the Rural Housing and Community Development Service or its predecessor agencies.

(6) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100–628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing and Community Development Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(7) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing and Community Development Service.

(8) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural housing and community development credit and financial assistance.

(9) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(10) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community Development: Making and issuing notes to the Secretary of the

Treasury for the purposes the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(a)) and the Rural Housing Insurance Fund as authorized by title V of the Housing Act of 1949 (41 U.S.C. 1487).

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

§ 2.51 Deputy Under Secretary for Food Safety.

Pursuant to § 2.18, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food Safety to the Deputy Under Secretary for Food Safety, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm and Foreign Agricultural Services.

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.18, the following delegations of authority are made by the Under Secretary for Food Safety to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–611, 615–624, 641–645, 661, 671–680, 691–692, 694–695);

(iii) Egg Products Inspection Act, except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(v) Humane Slaughter Act (7 U.S.C. 1901–1906); and

(vi) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to wholesomeness of meat and poultry and products thereof and inspection of egg and egg products.

(3) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(4) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(5) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

(6) Administer and conduct a food safety research program (7 U.S.C. 427).

(7) Coordinate with the Animal and Plant Health Inspection Service the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(8) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(b) [Reserved]

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

§ 2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.

Pursuant to § 2.19(a), subject to reservations in § 2.19(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food, Nutrition, and Consumer Services to the Deputy Under Secretary for Food, Nutrition and Consumer Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food, Nutrition, and Consumer Services.

§ 2.57 Administrator, Food and Consumer Service.

(a) *Delegations.* Pursuant to § 2.19(a)(1), (a)(2) and (a)(5), subject to reservations in § 2.19(b)(1), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Consumer Service:

(1) Administer the following legislation:

(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(ii) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof;

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790);

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note); and

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. No. 103–448).

(2) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(i) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(ii) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(iii) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation;

(iv) Section 9 of the Act of September 6, 1958 (7 U.S.C. 1431b);

(v) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(vi) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(vii) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(viii) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(ix) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(x) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(xi) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. No. 97–98);

(xii) Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note);

(xiii) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(xiv) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(3) Administer those functions relating to the distribution of food coupons under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(5) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(6) Authorize defense emergency food stamp assistance.

(7) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(8) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(9) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(10) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(11) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(12) Serve as a consumer ombudsman and communication link between consumers and the Department.

(13) Approve the designation of agency Consumer Affairs Contacts.

(b) [Reserved]

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

§ 2.59 Deputy Under Secretaries for Natural Resources and Environment.

Pursuant to § 2.20(a), subject to reservations in § 2.20(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Natural Resources

and Environment to the Deputy Under Secretaries for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Natural Resources and Environment. Provided, that, except in the absence of both the Under Secretary and a Deputy Under Secretary, this authority shall be exercised by the respective Deputy Under Secretary only with respect to the area or responsibility assigned to him or her.

§ 2.60 Chief, Forest Service.

(a) *Delegations.* Pursuant to § 2.20(a)(1), (a)(2), (a)(6), (a)(7)(ii) and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(h), 205(a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and

urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(17) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i) (A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b-1);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a-h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Provide assistance to the Rural Housing and Community Development Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(26) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(27) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(28) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(29) [Reserved]

(30) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a-558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on the National Response Team on hazardous spills pursuant to Pub. L. No. 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 11735, 3 CFR, 1971–1975 Comp., p. 793.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215) with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(45) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(37).

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial

agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order 11609, 3 CFR, 1971–1975 Comp., p. 586).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 Chief, Natural Resources Conservation Service.

(a) *Delegations.* Pursuant to § 2.20 (a)(1), (a)(3), (a)(5), (a)(6), (a)(7)(ii) and (a)(8), subject to reservations in § 2.20(b)(1), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Natural Resources Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in evaluating and coordinating land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 4201 note), except as otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(80) and the Administrator, Cooperative State Research, Education, and Extension Service in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, 1–1, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetroplitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*2*) To the Rural Housing and Community Development Service in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the Watershed Protection and Flood Prevention Programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service;

(iii) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590a–f, and 16 U.S.C. 1001–1009, except for responsibilities assigned to the Forest Service;

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Rural Housing and Community Development Service and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Rural Utilities Service.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*), except for responsibilities assigned to other USDA agencies.

(9) Administer Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(10) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c) including:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(13) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(i) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(iii) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(iv) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(v) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(18) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(19) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(20) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(21) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural lands and water.

(22) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), except for responsibilities assigned to the Forest Service.

(23) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary

assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622) and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act (42 U.S.C. 9633(b)(1)), related to mixed funding agreements.

(24) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a-f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

§ 2.63 Deputy Under Secretary for Research, Education, and Economics.

Pursuant to § 2.21(a), subject to reservations in § 2.21(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Research, Education, and Economics, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Research, Education, and Economics.

§ 2.65 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to § 2.21(a)(1), (a)(3) and (a)(5) through (a)(7), subject to reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Agricultural Research Service:

(1) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y).

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(3) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(4) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(5) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(6) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(7) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(8) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery

except as otherwise delegated in §§ 2.22(a)(1)(ii) and 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201 and 2204).

(9) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(10) Advance the livestock and agricultural interests of the United States, including the breeding of horses suited to the needs of the United States (7 U.S.C. 437).

(11) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(12) Make facilities grants and conduct research under the IR–4 program (7 U.S.C. 450i(d) and (e)).

(13) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(14) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the by-products thereof (7 U.S.C. 1292).

(15) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1441 note).

(16) Conduct research to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(17) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(18) Provide national leadership and support for research programs and other research activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(19) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(20) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(21) Conduct program evaluations to improve the administration and effectiveness of agricultural research and education programs (7 U.S.C. 3317).

(22) Enter into contracts, grants, or cooperative agreements to further research programs and library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(23) Enter into cost-reimbursable agreements relating to agricultural research, teaching and to further library and related information programs supporting research, extension and teaching programs in the food and agricultural sciences (7 U.S.C. 3319a).

(24) Conduct research for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(25) Conduct research on potential uses for compost from agricultural wastes, including evaluating the application of compost on soil, plants, and crops (7 U.S.C. 3130).

(26) Reserved.

(27) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(28) Perform research and development at aquacultural research and development centers (7 U.S.C. 3322).

(29) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(31) Conduct research to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(32) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841).

(33) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(34) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(35) Conduct research on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(36) Conduct research in the control and eradication of exotic pests (7 U.S.C. 5883).

(37) Conduct research to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(38) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(39) Establish and coordinate USDA programs and conduct basic and applied research and technology development in the areas of plant genome structure and function (7 U.S.C. 5924).

(40) Conduct research for the development of technology to determine animal lean content (7 U.S.C. 5925).

(41) Conduct research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(42) Conduct research to develop production methods and commercial uses of mesquite (7 U.S.C. 5925).

(43) Conduct research to investigate enhanced genetic selection and processing techniques of prickly pears (7 U.S.C. 5925).

(44) Conduct a research program and administer grants and contracts for research on the disease of scrapie in sheep and goats (7 U.S.C. 5925).

(45) Conduct basic and applied research in the development of new commercial products from natural plant materials (7 U.S.C. 5925).

(46) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(47) Coordinate USDA policy and programs relating to global climate change (7 U.S.C. 6701–6703).

(48) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(49) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste

Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(50) Perform research and administer grants for research and development in aquaculture (16 U.S.C. 2804).

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life; accept and administer gifts or devices of real and personal property for the benefit of the National Arboretum; and order disbursements from the Treasury (20 U.S.C. 191–195).

(52) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(53) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(54) Conduct research activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(55) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(56) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(57) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18840, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE.; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(58) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(e).

(59) Provide management support services for the Economic Research Service, the Cooperative State Research, Education and Extension Service, and the National Agricultural Statistics Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, ADP support, and related administrative services.

(60) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(61) Carry out research activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(62) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(63) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(64) Administer a National Food and Human Nutrition Research Program under the National Agricultural

Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3175, 3177).

(65) The authority in paragraph (a)(64) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Coordinate nutrition education research and professional education projects within the Department; and

(iv) Maintain data generated on food composition in a National Nutrient Data Bank.

(66) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(67) Conduct a program of nutrition education research.

(68) Provide staff support to the Under Secretary for Research, Education, and Economics related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(69) Obtain and furnish excess property to eligible recipients for use in the conduct of research and extension programs.

(70) Provide resource information concerning rural electric and telephone use and rural development efforts (7 U.S.C. 917).

(71) Act as a catalyst to provide access to leadership training and services programs encompassing private, public, business, and government entities in cooperation with the Extension Service (7 U.S.C. 950aa–1).

(72) Develop and maintain library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(73) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for the carrying out of any of its functions (7 U.S.C. 2264–2265).

(74) Provide for the dissemination of appropriate rural health and safety information resources possessed by the National Agricultural Library Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(75) Provide national leadership in the development and maintenance of library and related information systems and other activities to support the research, extension, and teaching programs in the food and agricultural sciences pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 and 3121).

(76) Administer the programs and services of the National Agricultural Library consistent with its charge to serve as the primary agricultural information resource of the United States and enter into agreements and receive funds from various entities to conduct National Agricultural Library activities (7 U.S.C. 3125a).

(77) Provide and distribute information and data about Federal, State, local, and other rural development assistance programs and services available to individuals and organizations. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(78) Assemble and collect food and nutrition educational materials, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(79) Conduct program evaluations to improve the administration and efficacy of the National Agricultural Library and related information systems in the food and agricultural sciences (7 U.S.C. 3317).

(80) Administer the National Agricultural Library, including the farmland information center, pursuant to section 1544(b) of the Farmland Protection Policy Act (7 U.S.C. 4205(b)).

(81) Support Department water programs through participation in State water quality coordination programs and dissemination of agrichemical information (7 U.S.C. 5503–5506).

(82) Provide a repository of agriculture and ground water quality planning information (7 U.S.C. 5505).

(83) Disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(84) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(85) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(86) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(87) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(88) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(89) Copy and deliver on demand selected articles and other materials from the National Agricultural Library's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (17 U.S.C. 106, 107 and 108).

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information systems of USDA.

(91) Assure the acquisition, preservation, and accessibility of all information concerning food and

agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(92) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(b) [Reserved]

§ 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(1) and (a)(3), subject to the reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Extension to the Administrator, Cooperative State Research, Education, and Extension Service.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (7 U.S.C. 178–178n).

(2) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(3) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(4) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(5) Support agricultural research at eligible institutions in the States through provision of Federal-grant funds to help financial physical research facilities (7 U.S.C. 390–390k).

(6) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for research to further USDA programs (7 U.S.C. 450i(b)).

(8) Administer a program of special grants to carry out research to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

(9) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(11) Provide national leadership and support for cooperative research and extension programs and other cooperative activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(12) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(13) Administer higher education programs in the food and agricultural sciences and administer grants to colleges and universities (7 U.S.C. 3152).

(14) Administer the National Food and Agricultural Sciences Teaching Awards program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(15) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohol and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(16) Administer a grant, in consultation with the Agricultural Research Service, for the establishment of a food science and nutrition research center for the Southeast Region of the United States (7 U.S.C. 3174).

(17) Conduct a program of grants to States to support continuing animal health and disease research programs under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(18) Support continuing agricultural and forestry research and extension, resident instruction, and facilities improvement at 1890 land-grant colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, and 3222a–3222c).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222(b)–3223).

(20) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research and extension activities (7 U.S.C. 3291).

(21) Administer grants to States in support of the establishment and operation of International Trade Development Centers (7 U.S.C. 3292).

(22) Conduct program evaluations to improve the administration and efficacy of the cooperative research grants and extension programs involving State agricultural experiment stations, cooperative extension services, and colleges and universities (7 U.S.C. 3317).

(23) Enter into contracts, grants, or cooperative agreements to further research, extension or teaching activities in the food and agricultural sciences (7 U.S.C. 3318)

(24) Enter into cost-reimbursable agreements relating to agricultural research, extension or teaching activities (7 U.S.C. 3319a).

(25) Provide technical assistance to farm owners and operators, marketing cooperatives, and others in the development and implementation of a research and pilot project program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an aquacultural assistance program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; conducting a program of extension and demonstration centers; and making grants to States to formulate aquaculture development plans for the production

and marketing of aquaculture species and products (7 U.S.C. 3322).

(27) Administer grants to further develop and expand aquaculture research facilities for intensive water recirculating aquaculture systems (7 U.S.C. 3323).

(28) Administer a cooperative rangeland research program (7 U.S.C. 3331–3336).

(29) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Administer programs and conduct projects in cooperation with other agencies for research and education on sustainable agriculture (7 U.S.C. 5811–5813).

(31) Administer a cooperative research and extension program to optimize crop and livestock production potential in integrated resource management and integrated crop management systems (7 U.S.C. 5821).

(32) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(33) Administer a cooperative extension program on agricultural weather forecasts and climate information for agricultural producers and administer a grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(34) In cooperation with the Agricultural Research Service, administer competitive research grants regarding the production, preparation, processing, handling, and storage of agriculture products (7 U.S.C. 5871–5874).

(35) Administer a grants and contracts program on integrated pest management including research to benefit floriculture and administer an extension program developed for integrated pest management (7 U.S.C. 5881).

(36) Administer a grants program to States on the control of infestations and eradication of exotic pests (7 U.S.C. 5883).

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38) Administer a special grants program to assist efforts by research institutions to improve the efficiency and efficacy of safety and inspection systems for livestock products (7 U.S.C. 5923).

(39) Administer a competitive grants program in support of the development of a plant genome mapping program (7 U.S.C. 5924).

(40) Support research related to the development of new commercial products derived from natural plant materials for industrial, medical, and agricultural applications (7 U.S.C. 5925).

(41) Administer a competitive grants program to develop production methods and commercial uses for mesquite (7 U.S.C. 5925).

(42) Administer a competitive grants program to investigate enhanced selection and processing techniques of prickly pears (7 U.S.C. 5925).

(43) Support research to determine the presence of aflatoxin in the food and feed chains (7 U.S.C. 5925).

(44) Administer research and extension grants for the development of agricultural production and marketing systems to service niche markets (7 U.S.C. 5925).

(45) Administer a grants program to States on immunoassay, as it is used to detect agricultural pesticide residues on agricultural commodities and to diagnose plant and animal diseases (7 U.S.C. 5925).

(46) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(47) Administer a competitive grants program, in consultation with the Agricultural Research Service, to establish national centers for agricultural product quality research (7 U.S.C. 5928).

(48) Administer a special grants program to study constraints on agricultural trade (7 U.S.C. 5931).

(49) Support research on the effects of global climate change in agriculture and forestry, including mitigation of the effects on crops of economic significance, and on the effects of the emissions of certain gases on global climate change (7 U.S.C. 6702).

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)-(k)).

(51) Administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a-8).

(52) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(53) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural responsibilities within the Department (16 U.S.C. 2805).

(54) Administer extension education programs in aquaculture and administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(55) Coordinate research by cooperating State research institutions and administer education and information activities assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(56) Provide management support services to agencies reporting to the Under Secretary for Research, Education, and Economics in the administration of discretionary grants.

(57) Represent the Department on the Federal Interagency Council on Education.

(58) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(59) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(60) Administer education programs for the users and dealers of agrichemicals (7 U.S.C. 5506).

(61) Administer a cooperative agricultural extension program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(62) Administer a cooperative agricultural extension program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(63) Conduct educational and demonstration work related to the distribution and marketing of a agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(65) Administer a nutrition education program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(66) Administer a grants program for rural health and safety education (7 U.S.C. 2662).

(67) Administer a rural economic and business development program to employ specialists to assist individuals in business activities (7 U.S.C. 2662).

(68) Administer a national program to provide rural citizens with training to increase their leadership abilities (7 U.S.C. 2662).

(69) Administer a competitive grant program for financially stressed farmers, dislocated farmers, and rural families (7 U.S.C. 2662(f)).

(70) Administer a grant program to improve the rural health infrastructure (7 U.S.C. 2662 note).

(71) Administer a competitive grant program to establish demonstration areas for rural economic development (7 U.S.C. 2662a).

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) Identify and compile information on methods of composting agricultural wastes and its potential uses and develop educational programs on composting (7 U.S.C. 3130).

(74) Administer a national food and human nutrition extension program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3171–3175).

(75) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(76) Design educational programs, implement, and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland pursuant to section 1544(a) of the Farmland Protection Policy Act (7 U.S.C. 4205(a)).

(77) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(78) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(79) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(80) Establish a national pesticide resistance monitoring program (7 U.S.C. 5882).

(81) Conduct educational programs on the biology and behavior of chinch bugs (7 U.S.C. 5884).

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Administer competitive grants to States to establish a pilot project to coordinate food and nutrition education programs (7 U.S.C. 2027(a) and 5932).

(84) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(85) Conduct educational and demonstrational work in cooperative farm forestry programs (16 U.S.C. 568).

(86) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(87) Conduct forestry and natural resource education programs, including guidelines for technology transfer (16 U.S.C. 1674).

(88) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(89) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(90) Implement and conduct an educational program to assist the development of urban and community forestry programs (16 U.S.C. 2105).

(91) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(92) Authorize the use of the 4–H Club name and emblem (18 U.S.C. 707).

(93) Conduct demonstrational and promotional activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(94) Provide leadership and direct assistance in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) Carry out demonstration and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(97) Provide educational and technical assistance in implementing and administering the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509, 16 U.S.C. 3831–3844).

(b) [Reserved]

§ 2.67 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3), (a)(8) and (a)(9), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to:

(i) food and agriculture situation and outlook;

(ii) the production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(iii) basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(iv) natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(v) rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(3) Perform economic and other social science research under section 104(b) (1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704(b)(1), (3)).

(4) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials

prepared for release through the press, radio and television.

(6) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Office of International Cooperation and Development, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(7) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(8) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor; food and agricultural aspects of economic stabilization and economic research; and coordination of energy programs.

(9) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(10) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(11) Provide Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans; and

(v) Preparing reports on energy and energy-related policies and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(11) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from the departments and agencies of the Federal Government pursuant to interagency agreements.

(12) Represent the Under Secretary for Research, Education, and Economics at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy and other governmental departments and agencies.

(13) Provide the Under Secretary for Research, Education, and Economics with such assistance as he may request to perform the duties delegated to him concerning energy.

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3) and (a)(8), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, National Agricultural Statistics Service:

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 411a, 475, 951, and 2204).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(4) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning coordination of damage assessment; and food and agricultural aspects of agricultural statistics.

(5) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(6) Enter cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(7) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension, and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and, with the concurrence of the Foreign Agricultural Service, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

Subpart L—Delegations of Authority by the Chief Economist

§ 2.70 Deputy Chief Economist.

Pursuant to § 2.29, the following delegation of authority is made by the Chief Economist to the Deputy Chief Economist, to be exercised only during the absence or unavailability of the Chief Economist: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Economist.

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) *Delegations.* Pursuant to § 2.29(a)(2), the following delegations of authority are by the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis:

(1) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the Federal Register as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e)

(2) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to § 2.29 (a)(3) through (a)(7), the following delegations of authority are made by the Chief Economist to the Chairman, World Agricultural Outlook Board:

(1) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(2) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(3) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(4) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) Coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

Subpart M—Delegations of Authority by the Chief Financial Officer

§ 2.75 Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the Deputy Chief Financial Officer, to be exercised only during the absence or unavailability of the Chief Financial Officer: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Financial Officer.

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

§ 2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Marketing and Regulatory Programs to the Deputy Assistant Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or

unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Marketing and Regulatory Programs.

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to § 2.22 (a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), including payments to State departments of agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(i) Studies of facilities and methods used in physical distribution of food and other farm products;

(ii) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(iii) application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627).

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(ii) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(iii) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(iv) [Reserved]

(v) Naval Stores Act (7 U.S.C. 91–99);

(vi) Tobacco Inspection Act (7 U.S.C. 511–511q);

(vii) Wool Standards Act (7 U.S.C. 415–415d);

(viii) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118) and section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119), except as specified in § 2.43(a)(24);

(x) Export Apple and Pear Act (7 U.S.C. 581–590);

(xi) Export Grape and Plum Act (7 U.S.C. 591–599);

(xii) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(xiii) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(xiv) Produce Agency Act (7 U.S.C. 491–497);

(xv) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(xvii) Tobacco Statistics Act (7 U.S.C. 501–508);

(xxii) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(xxiii) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(xxiv) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as specified in § 2.43(a)(24);

(xxv) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371-2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(xxvi) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as specified in § 2.43(a)(24);

(xxvii) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as specified in § 2.43(a)(24);

(xxviii) [Reserved]

(xxix) Section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), except as specified in §§ 2.42(a)(25) and 2.43(a)(24);

(xxxi) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated in § 2.43(a)(24);

(xxxii) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated in §§ 2.42(a)(29) and 2.43(a)(24);

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.43(a)(24);

(xxxiv) Egg Products Inspection Act relating to the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(xxxvii) In carrying out the procurement functions in paragraphs (a)(8) (xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693);

(xxxix) The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), except as specified in § 2.43(a)(24);

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612);

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319);

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis

in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as specified in § 2.43(a)(24);

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as specified in § 2.43(a)(24);

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as specified in § 2.43(a)(24);

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as specified in § 2.43(a)(24);

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417);

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(liv) Pesticide Recordkeeping (7 U.S.C. 136i–l) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(lv) the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406); and

(lvi) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

(9) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, Agricultural Marketing Service and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(10) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Marketing and Regulatory Programs:

(1) Taking final action on regulations under section 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 2111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended, (7 U.S.C. 4509(a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7

U.S.C. 4814(a)); section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909(a)); section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4609(a)); section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a)); section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 4313(a)); section 1710(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409(a)); section 1913(a) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6008(a)); section 1927(a) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6106(a)); section 1957(a) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6206(a)); section 1971(a) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6306(a)); section 1999K(a) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6410(a)); and section 7 of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7106).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; the Floral Research and Consumer Information Act; the Egg Research and Consumer Information Act; the Wheat and Wheat Foods Research and Nutrition Education Act; the Pecan Promotion and Research Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Lime Research, Promotion, and Consumer Information Act of 1990; the Soybean Promotion, Research, and Consumer Information Act; the Fluid Milk Promotion Act of 1990; the Organic Foods Production Act of 1990; and the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111).

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to § 2.22 (a)(2), (a)(6) through (a)(9), subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

(1) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service, nor an authority to represent the Department of Agriculture in interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(2) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

(3) The Mexican Border Act, as amended (7 U.S.C. 149).

(4) The Golden Nematode Act (7 U.S.C. 150–150g).

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

(6) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(7) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(8) The Honeybee Act, as amended (7 U.S.C. 281–286).

(9) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656).

(10) Tariff Act of June 17, 1930, as amended, section 306 (19 U.S.C. 1306).

(11) Act of August 30, 1890, as amended (21 U.S.C. 102–105).

(12) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130).

(13) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1).

(14) Act of June 16, 1948 (21 U.S.C. 114e–114f).

(15) Act of September 6, 1961 (21 U.S.C. 114g–114h).

(16) Act of July 2, 1962 (21 U.S.C. 134–134h).

(17) Act of May 6, 1970 (21 U.S.C. 135–135b).

(18) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618).

(19) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429).

(20) The responsibilities of the United States under the International Plant Protection Convention.

(21) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(22) Horse Protection Act (15 U.S.C. 1821–1831).

(23) 28 Hour Law, as amended (49 U.S.C. 80502).

(24) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(25) Purebred animal duty-free-entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01).

(26) Virus-Serum-Toxin Act (21 U.S.C. 151–158).

(27) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a).

(28) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

(29) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(30) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(31) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814).

(32) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(33) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(35) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(36) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(37) Title III (and title IV to the extent that it relates to activities under title III) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610).

(38) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260).

(39) Provide management support services for the Grain Inspection, Packers and Stockyards Administration, and the Agricultural Marketing Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(40) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and other governmental and private organizations.

(41) The Act of March 2, 1931 (7 U.S.C. 426–426b).

(42) The Act of December 22, 1987 (7 U.S.C. 426c).

(43) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

(44) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(45) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(46) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

(47) The provisions of 35 U.S.C. 156.

(48) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(49) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(b) *Reservation.* The following authority is reserved to the Assistant Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

§ 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22 (a)(3) and (a)(9), the following delegations of authority are made by the

Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection Service, Packers and Stockyards Administration:

(1) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(2) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities related to grain.

(3) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(4) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(5) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(6) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(7) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

§ 2.83 Deputy Assistant Secretary for Congressional Relations.

Pursuant to § 2.23, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Assistant Secretary for Congressional Relations.

§ 2.85 Director, Office of Congressional and Intergovernmental Relations.

(a) *Delegations.* Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Congressional and Intergovernmental Relations:

(1) Exercise responsibility for coordination of all congressional matters in the Department.

(2) Maintain liaison with the Congress and the White House on legislative matters of concern to the Department.

(3) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;

(viii) International City Managers Association;

(ix) U.S. Conference of Mayors; and

(x) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(4) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(5) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(6) Act as the department representative for Federal executive board matters.

(7) Administer the implementation of the National Historic Preservation Act of 1966, National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic Preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(8) Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.87 Deputy Assistant Secretary for Administration.

Pursuant to § 2.24(a), subject to reservations in § 2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration.

§ 2.89 Director, Office of Civil Rights Enforcement.

(a) *Delegations.* Pursuant to § 2.24(a)(8), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Civil Rights Enforcement:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery compliance and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs;

(ii) Actions to enforce title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(iii) Actions to enforce title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department;

(iv) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination on the basis of handicap in USDA programs and activities funded by the Department;

(v) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department;

(vi) Actions to enforce related Executive orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(vii) Actions to develop and implement the Department's Federal Women's Programs; and

(viii) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate USDA agency and Department systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Serve as the focal point through which all contacts with the Department of Justice are made involving matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Serve as the focal point through which all contacts with the Department of Health and Human Services are made involving matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement action, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department of Agriculture pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department and/or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department of Agriculture pursuant to § 15.8(c) of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate; and perform investigations as to complaints filed under subpart B of part 15 of this title.

(13) Conduct investigations and compliance reviews Departmentwide.

(14) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(15) Perform staff work for the Director of Equal Employment Opportunity including coordination of the Department's affirmative employment program, special emphasis programs, Federal equal opportunity recruitment program, equal employment opportunity evaluations, and development of policy.

(16) Provide equal employment opportunity services for managers and employees in the Departmental staff offices.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission, the Office of Personnel Management, USDA agencies, Department employees, and applicants for positions within the Department.

(18) Monitor, evaluate, and report on agency compliance with established policy and executive orders which further the participation of historically black colleges and universities and with other colleges and universities with substantial monitored group enrollment in Departmental programs and activities.

(19) Perform the EEO counseling function for the Department.

(20) Maintain liaison with historically black colleges and universities and other colleges and universities with substantial minority group enrollment, and assisting USDA agencies in strengthening such institutions by facilitating institutional participation in USDA programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(22) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Perform staff work for the Director of Equal Employment Opportunity on the preparation of decisions on complaints of discrimination.

(25) Provide liaison on EEO matters concerning complaints and appeals with USDA agencies and Department employees.

(26) Investigate USDA EEO complaints, with authority to enter into and administer contracts for such investigations.

(27) Make final decisions on complaints and grievance appeals, except in those cases where the Director, Office of Civil Rights Enforcement has participated, when it is determined that such complaint or grievance appeals are not being decided in a timely manner.

(28) Make final decisions on formal grievance appeals in all cases where the Deciding Official:

(i) Was involved directly in the grievance; or

(ii) Made the informal decision; or

(iii) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(29) The provisions of paragraphs (a)(27) and (a)(28) of this section shall not apply for positions in, or applicants for positions in, the Office of Inspector General.

(b) [Reserved]

§ 2.90 Director, Office of Information Resources Management.

(a) *Delegations.* Pursuant to § 2.24 (a)(4) and (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Information Resources Management:

(1) Assist the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), with the development of Departmental information resource management principles, policies and objectives.

(2) Coordinate with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the development and promulgation of Departmental information resources management standards, guidelines, rules, and regulations necessary to implement approved principles, policies, and objectives.

(3) Develop and implement an information resources management planning system which will integrate short-term and long-term objectives and coordinate agency and staff office initiatives in support of the objectives.

(4) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(5) Provide Departmentwide guidance and direction in all aspects of the USDA information management program including feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; and security. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(6) Manage the Departmental Computer Centers, including setting of rates to recover the cost of goods and services within approved policy and funding levels.

(7) Review and evaluate information resource management activities related to delegated functions to assure that they conform to all applicable Federal and Department information resource management policies, plans, standards, procedures, and guidelines.

(8) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(9) Administer the Departmental records, forms, reports, and directives management programs, in coordination with the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(10) Manage all aspects of the USDA telecommunications program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies. Manage Departmental telecommunications contracts. Provide technical advice throughout the Department on telecommunications matters.

(11) Implement a program for applying information resources management technology to improve productivity in the Department.

(12) Provide leadership to integrate and unify the management process for the Department's major information resource management system acquisitions and to monitor implementation of the policies and practices set forth in applicable OMB Circulars.

(13) Provide Departmental services related to Departmental administrative regulations, Secretarial issuances, and related management support.

(14) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(15) Provide automation, forms management, files management, directives management, and related services, with authority to take any action required by law or regulation to provide such services, for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such services as listed in paragraph (a)(15) of this section for any other officer or agency of the Department as may be agreed.

(16) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Bureau of Standards, and other organizations or agencies on matters related to delegated responsibilities.

(17) Provide staff assistance as required for the Secretary, general officers, and other Department and agency officials.

(18) Provide related support services needed by the Department to carry out defense responsibilities.

(19) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

(20) Review and make recommendations to the Assistant Secretary for Administration on proposed waivers to Federal Information Processing Standards (FIPS) pursuant to section 111(d)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759(d)(3)).

(b) [Reserved]

§ 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24 (a)(3), (a)(4) and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Contracting for and the procurement of administrative and operating supplies, services, equipment and construction;

(ii) Socioeconomic programs relating to contracting, excepting those matters otherwise vested by statute in the Director of Small and Disadvantaged Business Utilization;

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(iv) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Acquisition, storage, distribution and disposition of forms, supplies and equipment;

(vi) Mail management;

(vii) Motor vehicle fleet and other vehicular transportation;

(viii) Transportation of things (traffic management);

(ix) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(x) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(xi) Development and implementation of energy management actions related to the internal operations of the Department. Maintain liaison with other Government agencies in these matters.

(2) Operate, or provide for the operation of, centralized Departmental services to provide printing, copy reproduction, offset composition, supply, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuance of general employee identification cards, supplemental distribution of Department directives, space allocation and management, and related management support.

(3) Exercise the following special authorities:

(i) The Director, Office of Operations, is designated as the Department's Debarring Officer, and authorized to perform the functions of 48 CFR part 9, subparts 9.406 and 9.407;

(ii) Conduct liaison with the Office of the Federal Register (1 CFR part 16), including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection of historical material for Presidential Libraries;

(vi) Oversee the safeguarding of unclassified materials designated ''For Official Use Only;''

(vii) Make determinations under 48 CFR 14.406–3(a)–(d), related to mistakes in bids alleged after opening of bids and before award. Except for the authority to permit withdrawal of bids under 48 CFR 14.406–3(c), this authority may not be redelegated; and

(viii) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes executing such verifications or certifications as may be required by 26 CFR 1.6050M–1, and making the election allowed by 26 CFR 1.6050M–1(d)(5)(i).

(4) Provide procurement, property management, space management, communications (telephone), messenger, and related services with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration; and

(iv) Provide such services as listed in paragraph (a)(4) of this section for any other officers or agencies of the Department as may be agreed.

(5) Exercise full Departmentwide contracting and procurement authority for automatic data processing and data transmission equipment, software, services, maintenance, and related supplies, subject to the review of the Senior Official designated under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This authority includes the promulgation of Departmental directives regulating the management of contracting and procurement functions.

(6) Provide related support services needed by the Department to carry out defense responsibilities.

(7) Provide staff assistance for the Secretary, general officers and other Department and agency officials.

(8) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(9) Exercise authority under the Department's Acquisition Executive (Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular A–109, Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(ii) Review the program management of each major system acquisition;

(iii) Designate the program manager for each major system acquisition; and

(iv) Designate any Departmental acquisition as a major system acquisition under OMB Circular A–109.

(10) Pursuant to Executive Order 12352, 3 CFR, 1982 Comp., p. 137, and sections 16, 20(b), and 21 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b) and 418, the Director, Office of Operations, is designated as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental procurement policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the procurement work force;

(vii) Participating in the development of Government-wide procurement policies, regulations, and standards and determining specific areas where Government-wide performance standards should be established and applied;

(viii) Determining areas of Department-unique standards and developing unique Department-wide standards;

(ix) Certifying to the Secretary that the procurement system meets approved standards;

(x) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are met;

(xi) Redelegating, as appropriate, the authority in paragraph (a)(10)(i) of this section to USDA agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xii) Redelegating the authorities in paragraphs (a)(10) (ii), (iii), (iv), (vi), and (vii) of this section to USDA agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

(12) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(13) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(b) [Reserved]

§ 2.92 Director, Office of Personnel.

(a) *Delegations.* Pursuant to § 2.24 (a)(4), (a)(5) and (a)(7), subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director of Personnel:

(1) Authority to formulate and issue Department policy, standards, rules and regulations relating to personnel.

(2) Provide personnel management procedural guidance and operational instructions.

(3) Design and establish personnel data systems.

(4) Inspect and evaluate personnel management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive orders, Office of Personnel Management rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all personnel matters, including individual cases, that involve the jurisdiction of more than one General Officer.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in personnel matters.

(7) Make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration has participated, when it is determined that such adverse action is not being decided in a timely manner.

(8) Represent the Department in personnel matters in all contacts outside the Department.

(9) Specific authorities in the following operational matters:

(i) Authorize cash awards above $2,500;

(ii) Waive repayment of training expenses where employee fails to fulfill service agreement;

(iii) Establish or change standards and plans for awards to private citizens;

(iv) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Association of Management Officials or Supervisor's Agreements.

(v) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(vi) Change a position (with no material change in duties) from GS to a pay system other than a wage system, or vice versa;

(vii) Grant restoration rights, and release employees with administrative re-employment rights;

(viii) Change working hours for groups of 50 or more employees in the Washington, DC metropolitan area;

(ix) Authorize any mass dismissals of employees in the Washington, DC metropolitan area;

(x) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in grade criteria;

(xi) Make final decisions on adverse action and performance rating appeals in all cases where the Deciding Official:

(A) Was involved directly in the adverse action, or performance rating appeal; or

(B) Made the informal decision; or

(C) Determines that the Examiner's findings or Committee's recommendations is unacceptable.

(xii) Make the final decision on all classification appeals from agency appellate decisions;

(xiii) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(xiv) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C; and

(B) Administrative Law Judge.

(xv) Authorize employment actions (accessions or extensions) for the following:

(A) Employees whose records are flagged; and

(B) Contract services.

(xvi) Authorize employment actions (accessions or extensions and transfers) for the following:

(A) Persons with criminal or immoral records;

(B) Persons separated for misconduct, delinquency, or resignation to avoid such action; and

(C) Veterans with dishonorable or other than dishonorable discharge.

(xvii) Authorize adverse actions for positions in GS–14–15 and equivalent;

(xviii) Approve assignments of White House details;

(xix) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(xx) Authorize long-term training in programs which require Department-wide competition;

(xxi) Issue all Coordinated Federal Wage Systems (CFWS) Department-wide Wage Schedules, and Lithographic Wage Schedules in the Washington, DC Metropolitan Area; and

(xxii) Initiate and take adverse action in cases involving a violation of the merit system.

(10) As used herein, the term personnel includes:

(i) Position management;

(ii) Position classification;

(iii) Employment;

(iv) Pay administration;

(v) Automation of personnel data and systems design;

(vi) Hours of duty;

(vii) Performance evaluation and standards;

(viii) Promotions;

(ix) Employee development;

(x) Incentive programs;

(xi) Leave;

(xii) Retirement;

(xiii) Program evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide personnel services, as listed in paragraph (a)(10) of this section, and organizational support services, with authority to take actions required by law or regulation for:

(i) The Secretary of Agriculture;

(ii) The general officers of the Department, except the Inspector General;

(iii) The offices and agencies reporting to the Assistant Secretary for Administration, except the National Finance Center; and

(iv) Provide such services as listed in paragraph (a)(11) of this section for any other officer or agency of the Department as may be agreed.

(12) Provide personnel services relating to defense responsibilities of the Department.

(13) The provisions of paragraphs (a)(9)(xiii) through (xvii) of this section shall not apply to positions in, or applicants for positions in, the Office of Inspector General.

(14) Maintain, review and update departmental delegations of authority.

(15) Authorize organizational changes which occur in:

(i) Departmental organizations:

(A) Service or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in departmental centers, only).

(ii) Field organizations:

(A) First organizational level; and

(B) Next lower organizational level—required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental Regulation 1010–1, available from the Chief, Information Management Division, Office of Information Resources Management, Room 403–W, Administration Building, U.S. Department of Agriculture, Washington, DC 20250.

(16) Formulate and promulgate departmental organizational objectives and policies.

(17) Provide staff assistance and support to the Department's Committee Management Officer.

(18) Formulate policies and procedures on the establishment and management of committees in the Department.

(19) Consult with GSA and Departmental agencies on the establishment and reestablishment of advisory committees.

(20) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive orders and other policy and procedural issuances related to occupational safety and health within the Department.

(21) Represent the Department in all rulemaking, advisory or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(22) Determine and/or provide Departmentwide technical services and regional staff support for the safety and health programs.

(23) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(24) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the USDA Drug-Free Workplace Program and designate the final appeal officer for that Program.

(25) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(26) Provide education and training on a Departmentwide basis for safety and health related issues and develop resource and operational manuals.

(b) *Reservation*. The following authority is reserved to the Assistant Secretary for Administration: Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

For Subparts A, B, C and D:

Dated: October 12, 1995.

Dan Glickman,

Secretary of Agriculture.

For Subpart E:

Dated: October 12, 1995.

Richard E. Rominger,

Deputy Secretary of Agriculture.

For Subpart F:

Dated: October 16, 1995.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart G:

Dated: October 13, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

For Subpart H:

Dated: October 16, 1995.

Michael Taylor,

Acting Under Secretary for Food Safety.

For Subpart I:

Dated: October 17, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

For Subpart J:

Dated: October 18, 1995.

James R. Lyons,

Under Secretary for Natural Resources and Environment.

For Subpart K:

Dated: October 17, 1995.

Karl N. Stauber,

Under Secretary for Research, Education, and Economics.

For Subpart L:

Dated: October 17, 1995.

Keith J. Collin,

Chief Economist.

For Subpart M:

Dated: October 30, 1995.

Irwin T. David,

Acting Chief Financial Officer.

For Subpart N:

Dated: October 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary for Marketing and Regulatory Programs.

For Subpart O:

Dated: October 19, 1995.

P. Scott Sheare,

Acting Assistant Secretary for Congressional Relations.

For Subpart P:

Dated: October 18, 1995.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 95–27388 Filed 11–7–95; 8:45 am]

BILLING CODE 3410–01–P

Federal Register

Wednesday
November 8, 1995

Part III

Environmental Protection Agency

40 CFR Part 260, et al.

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-Site; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 through 265, and 270

[EPA 530–Z–95–013; FRL–5325–5]

RIN 2050–AD90

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Redefinition of On-Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to Section 107 of the Federal Facility Compliance Act (FFCA) of 1992 which added a new subsection 3004(y) to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. section 6924(y)), EPA is today proposing a rule that identifies when conventional and chemical military munitions become a hazardous waste under RCRA, and that provides for the safe storage and transport of such waste. Today's proposal also amends existing regulations regarding emergency responses involving military munitions and other explosives. This amendment would apply to responses by non-military or private personnel, as well as by the military. The proposal also revises the definition of ''on-site,'' which applies to all generators of hazardous waste.

DATES: Written comments on these proposed rules will be accepted until January 8, 1996.

ADDRESSES: Written comments (one original and two copies) should be addressed to: EPA RCRA Docket #F–95–MMP–FFFFF, Mail Code 5305W, 401 M Street SW, Washington, DC 20460. Comments also may be submitted electronically by sending electronic mail (e-mail) through the Internet system to: RCRA-Docket@epamail.epa.gov. All electronic comments must be submitted as an ascii file avoiding the use of special characters and any form of encryption. The comments should be identified with the above docket number.

The official action for this record will be kept in paper form. Accordingly, EPA will convert all documents received electronically into printed paper form as they are received and will place the paper copies in the official record, which will also include all comments submitted directly in writing. The official record is the paper record kept in the RCRA Docket (see address above). (Comments submitted on paper will not be transferred to electronic format. These comments may be viewed only in the RCRA Docket as described here.)

Public comments and the supporting information used for this rule are available for public inspection and copying in the RCRA Information Center (RIC) located in room M2616 at the EPA address above. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (202) 260–9327.

The RIC will be closed November 14–24, 1995 because it is relocating to Arlington, Virginia. Between November 14 and 24, 1995, special appointments can be made for viewing material in this docket by calling the above number. Beginning November 27, 1995, call 703–603–9230. After that date, the Docket will be physically located at: Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The mailing address remains the same as given above.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9 am and 6 pm EST, toll-free, at 800–424–9346; 703–412–9810 from Government phones or if in the Washington, DC local calling area; or 800–553–7672 for the hearing impaired; or Ken Shuster, U.S. EPA (5303W), 401 M St. SW., Washington, DC 20460, (703) 308–8759.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Legal Authority
II. Background
A. Statutory Mandate
B. Issues Addressed in Proposal
C. Solid Waste for Regulatory Purposes vs. Solid Waste for Statutory Purposes
III. Summary of Proposed Rule
IV. Section-by-Section Analysis
A. Definition of Military Munitions
B. Definition of ''Solid Waste'' as It Applies to Military Munitions
1. Unused or Stockpiled Munitions
a. Status of Military Stockpile
b. Proposed § 261.2(g)(1)(i)—Unused munitions that have previously been disposed of
c. Proposed § 261.2(g)(1)(ii)—Munitions removed from the stockpile for the purposes of destruction
d. Proposed § 261.2(g)(1)(iii)—Leaking or deteriorated munitions
e. Proposed § 261.2(g)(1)(iv)—Munitions determined by DOD to be a solid waste
f. Rationale for EPA's Proposed Approach
2. Used or Fired Munitions
3. Munitions Used for Their Intended Purposes
a. Proposed § 261.2(g)(3)(i)—Military training exercises
b. Proposed § 261.2(g)(3)(ii)—Weapons testing
c. Proposed § 261.2(g)(3)(iii)—Range clearance during training or weapons testing
4. Discharged Military Munitions at Firing Ranges
5. Waste Materials Derived from Munitions Manufacture
C. Standards Applicable to Generators and Transporters
D. Storage of Military Munitions
E. Emergency Responses
F. Definition of ''On-Site''
G. Permit Modifications to Receive Off-Site Waste Munitions
V. Discussion of Major Alternatives
A. Stockpiled Munitions
1. Approach Based on Army Regulation 200–1
2. DOD Interim Guidance
3. Munitions Scheduled for Destruction by International Treaty
4. Alternatives Based on Condition of Munition
5. Regulation of the Demilitarization Process
B. Range Management
1. Active Ranges
2. Applicability of Range Cleanup Authorities
C. Alternative Organization (Separate CFR Part)
VI. State Authority
VII. Administrative Requirements/ Compliance with Executive Order
A. Regulatory Impact Analysis Under Executive Order 12866
1. Cost Analysis
2. Benefits Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates
VIII. References/Docket

I. Legal Authority

These regulations are proposed under authority of sections 2002, 3001–3007 (including 3004(y)), 3010, 7003, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by RCRA and the FFCA (42 U.S.C. 6912, 6921–7, 6930, and 6973–4).

II. Background

A. Statutory Mandate

Section 107 of the Federal Facility Compliance Act (FFCA) of 1992 amended the Resource Conservation and Recovery Act (RCRA) by adding a new section 3004(y) that requires EPA to propose regulations, after consulting with the Department of Defense (DOD) and appropriate State officials, that identify when conventional and chemical military munitions become hazardous waste under RCRA, and that provide for the safe storage and transportation of such waste.

Over the years, the applicability of RCRA to military munitions has been the subject of considerable controversy. The Department of Defense has expressed concern that differing regulations or interpretations from State to State substantially undermine its

ability to carry out its mission. DOD has particularly sought clarity in defining RCRA's application to military munitions storage and transport, the recycling or destruction of obsolete munitions, and immediate responses to emergencies involving explosives.[1] At the same time, citizens groups have expressed concern that many military activities involving munitions are insufficiently regulated. Congress amended RCRA to include section 3004(y) in response to these concerns.

Today's proposal responds to Congress's mandate in section 3004(y). In developing the proposal, EPA has consulted extensively with DOD and the States, as the statute requires. EPA has also met with and received comments from a consortium of citizens groups with particular interest in the environmental and human health impacts of military installations around the United States. In addition, representatives of the waste treatment industry have provided comments to EPA. Records of these meetings and information provided to EPA are included in the docket to today's rulemaking.

B. Issues Addressed in the Proposal

In developing today's proposal, EPA focused primarily on several key issues that have arisen in the implementation of the RCRA program at military installations, or that have been raised by DOD, States, or citizens groups. These issues are:

1. When does an unused munition become a RCRA ''hazardous waste,'' potentially subject to RCRA permitting and technical management standards? All parties agree that the destruction of unused munitions is regulated under RCRA (if the munitions meet the definition of ''hazardous''). But at what point in the process do stockpiled munitions slated for destruction first become subject to RCRA?

2. Should RCRA hazardous waste management standards apply to the use of munitions in weapons testing or military training exercises? Although EPA in the past has not regulated these activities under RCRA, it has been argued that military munitions are ''discarded'' during field exercises, and therefore should be subject to RCRA hazardous waste management standards. It has also been argued that certain activities associated with munitions training or testing—for example, the detonation of unexploded ordnance at a firing range—properly fall under RCRA jurisdiction.

3. How do RCRA hazardous waste regulations apply to emergencies involving explosive materials, including military munitions? DOD has expressed concern that current RCRA hazardous waste regulations may complicate responses by emergency personnel to unexploded ordnance and other emergencies.

4. In what way (if any) do RCRA requirements apply to unexploded ordnance and environmental contamination at military ranges and impact zones, especially ones that are closed?

5. Once it has been determined that a munition is a hazardous waste for regulatory purposes, what storage and transportation standards are needed to ensure protection of human health and the environment? DOD, in particular, expressed concern that certain RCRA standards are inconsistent with its internal regulations on munitions storage, and that the RCRA transportation requirements (including the manifest) are redundant with DOD controls.

Today's notice provides EPA's proposed resolution of these issues. The notice also proposes a new definition of ''on-site,'' to reduce unnecessary paperwork requirements for hazardous wastes transported within large facilities, including military installations.

C. Solid Waste for Regulatory Purposes vs. Solid Waste for Statutory Purposes

In addressing the issues above, EPA carefully reviewed the RCRA statutory and regulatory definitions of ''solid'' and ''hazardous'' waste. To avoid confusion in today's proposal, EPA notes at the outset that the terms ''solid waste'' and ''hazardous waste'' have different meanings depending upon the context in which the terms appear. These terms are defined in both the statute and in the regulations implementing RCRA Subtitle C.

RCRA statutorily defines ''solid waste'' in section 1004, 42 U.S.C. 6903(27), in pertinent part, as follows:

> The term ''solid waste'' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . .

42 U.S.C. 6903(27). The term ''hazardous waste'' is defined in the statute as those solid wastes that may ''(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' 42 U.S.C. 6903(5).

The terms ''solid waste'' and ''hazardous waste'' are defined for purposes of the regulatory program under Subtitle C of RCRA at 40 CFR 261.2 (solid waste) and 40 CFR 261.3 (hazardous waste). Materials meeting these definitions are a subset of the materials meeting the statutory definitions. EPA regulations at 40 CFR 261.1(b)(1) make clear that the regulatory definition of ''solid waste'' applies only to wastes that are also hazardous for purposes of the regulations implementing subtitle C of RCRA. Accordingly, the statutory definition of solid waste is broader in scope than the regulatory definitions of the term. See also 40 CFR 261.1(b)(2).

In parts IV.A thru B.3 and B.5 of the preamble, EPA discusses the circumstances under which *unused* munitions in the military stockpile are considered to meet the definition of ''solid waste'' as defined in the *regulations* implementing Subtitle C of RCRA. Therefore, in this context the relevant definition of ''solid waste'' is the definition contained in the Subtitle C regulations. Unused military munitions meeting the regulatory definitions of ''solid waste'' could be regulated as hazardous waste and thus subject to full Subtitle C requirements.

In part IV. B.4. of the proposal EPA discusses the circumstances under which *discharged or fired* munitions meet the *statutory* definition of ''solid waste''. As explained below, these materials would not meet the regulatory definition of ''solid waste'' and thus would not be regulated as ''hazardous waste''. Nevertheless, these materials could be ''solid waste'' as defined by the statute. Therefore, in this context the relevant definition of ''solid waste'' is the statutory definition. Discharged or fired munitions that meet the statutory definition of ''solid waste'' are subject to RCRA's remedial statutory authority.

III. Summary of Proposed Rule

Today's proposal addresses: (1) when military munitions become a solid, and therefore potentially a hazardous waste, (2) what transportation and storage requirements apply to military munitions that become a hazardous

[1] EPA and DOD have developed a considerable body of interpretive guidance and memoranda addressing these issues. EPA's most recent general discussion of these issues is in a June 23, 1994 letter from Michael Shapiro, Director of the EPA Office of Solid Waste, to Patrick J. Meehan, Acting Assistant Deputy Under Secretary of Defense for Compliance. This letter and other relevant guidance are included in the docket to today's rulemaking.

waste, (3) how RCRA hazardous waste regulations apply to immediate responses to emergencies involving military munitions and other explosives, (4) what RCRA requirements apply to fired munitions, and (5) an amendment to the definition of ''on-site,'' as it applies to hazardous waste generators.

On the issue of when a munition becomes a regulatory solid waste, today's proposal provides that *unused* military munitions in the military stockpile become solid waste when they are removed from storage in the stockpile for the purpose of disposal, or for treatment prior to disposal; when they are leaking or deteriorated to a point where they cannot be used or recycled; or when DOD or authorized Military Service personnel declare them to be a solid waste, whichever comes first. The proposal would make clear that munitions disposed of in the past, for example by burial at former military installations, are solid waste. At the same time, the proposal explicitly provides that use of munitions for their intended purpose (for example, in training exercises, or in activities associated with training, such as range clearance) does not constitute waste management regulated under RCRA.

The proposal also discusses alternate approaches to the regulation of unexploded ordnance and other munitions remaining at ranges after the range has been closed. Under the approach proposed in today's notice, these munitions would be considered statutory ''solid waste,'' potentially subject to RCRA cleanup authorities, until DOD develops range cleanup standards, in consultation with EPA and with full opportunity for public participation. Under today's proposal, DOD's standards, once issued, would take precedence over RCRA.

The proposal would also codify EPA policy on immediate responses to emergencies involving munitions and other explosives. Under the proposal, immediate responses taken by trained personnel (whether military, other governmental, or private) would not be subject to RCRA permitting or other requirements. In addition, if emergency transportation of the explosive were necessary, this could occur without a RCRA manifest.

The proposal also includes new standards for military magazines or bunkers used to store hazardous waste munitions. These standards are designed to provide consistency between RCRA technical standards and DOD standards for munitions storage. In addition, today's proposal would exempt military munitions from RCRA manifest and other RCRA transportation requirements, if they are being shipped to other DOD facilities under DOD's munitions tracking system.

Finally, the proposal revises the definition of ''on-site,'' so that hazardous waste generators may define on-site property to include all contiguous property (regardless of whether or not it is split by a road or right-of-way). This change will provide military installations and other large facilities (such as universities or large industrial complexes) greater flexibility in handling waste on site and will eliminate redundant paperwork requirements (e.g., by eliminating the manifest requirement).

IV. Section-by-Section Analysis

A. Definition of Military Munitions

Today's proposal includes a definition of ''military munitions'' (in § 260.10). This definition, which establishes the scope of today's rule, includes all types of ammunition products and their components, including conventional and chemical munitions, produced by or for the military for national defense and security. The definition lists a number of component examples, including propellants, explosives, pyrotechnics, and chemical and riot control agents; and product examples, including rockets, bombs, mines, grenades, artillery, and torpedoes. The definition excludes improvised explosive devices, for example, home-made bombs (which are non-military) [2] and nuclear weapons, devices, and components thereof managed under the Department of Energy's nuclear weapons program.

The proposed definition also clarifies that such military munitions may be under the control of the Department of Energy (DOE), the U.S. Coast Guard, the National Guard, or a private company producing the munitions under contract to or as an agent for DOD, as well as the Department of Defense.

EPA considered including in this rule non-nuclear components of munitions managed by DOE under its nuclear weapons program. Upon review, however, EPA has determined that section 107 of the FFCA does not contemplate the inclusion of nuclear weapons or their components within the scope of this rule. The statutory language and legislative history of § 107 demonstrates the intent of Congress that EPA develop regulations that address conventional and chemical munitions. No mention was made of nuclear weapons or their components. Furthermore, EPA recognizes that DOE's practices and procedures for the management of nuclear munitions under the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., as well as the potential impacts on DOE operations, are significantly different from those of DOD pertaining to conventional and chemical munitions.

For these reasons, EPA has decided not to include nuclear weapons components in today's proposal. Instead, the proposal addresses conventional and chemical weapons, as contemplated by § 107, and specifically does not apply to nuclear weapons or the components thereof managed under DOE's nuclear weapons program. Conventional or chemical munitions that DOE produces or manages for the military, however, would be subject to this proposed rule.

B. Definition of ''Solid Waste'' as It Applies to Military Munitions

RCRA section 3004(y) requires EPA to identify ''when military munitions become hazardous waste for purposes'' of Subtitle C of RCRA. In general, materials are considered to be ''hazardous waste,'' for regulatory purposes, if: (l) the material is a ''solid waste,'' as defined in 40 CFR 261.2, and (2) the material meets the definition of ''hazardous waste'' in 40 CFR 261.3. In today's proposal, EPA has focused on the first point—when munitions become a solid waste—and has not proposed to amend the definition of ''hazardous waste'' as it applies to munitions.

EPA has taken this approach because the controversy over when military munitions become regulated under RCRA Subtitle C hazardous waste standards has centered on the question of when munitions become ''solid waste'' under § 261.2, rather than on whether they are ''hazardous waste'' under § 261.3. Many military munitions meet the RCRA ''ignitability'' or ''reactivity'' characteristics, for example, because they are explosive (see 40 CFR 261.21 and 261.23 respectively).[3] In addition, other munitions are hazardous under the ''toxicity'' characteristic, because they contain high levels of lead or other toxic metals (see 40 CFR 261.24). EPA believes that the current definition of ''hazardous waste'' in 40 CFR 261.3 is adequate as it applies to

[2] Improvised explosive devices, or IEDs, are defined as non-standard explosive devices made from either military or non-military materials by non-military personnel.

[3] Some munitions are not ''reactive.'' For example, in a memorandum of June 2, l988, EPA stated that small arms ball ammunition of up to and including 0.50 calibers are not reactive within the meaning of RCRA. The Department of the Army has codified this position in Army Regulation 200–l, section 6–7(k).

waste munitions, and therefore proposes no change to 40 CFR 261.3.

Under 40 CFR 261.2 of the RCRA regulations, ''solid waste'' is defined as ''discarded material.'' Section 261.2 (a) through (f) provides a detailed regulatory definition of this term. In particular, § 261.2(b) defines ''discarded material'' as materials that are abandoned by being disposed of; burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned. In today's notice, EPA proposes to add a new § 261.2(g) specifying how the regulatory term ''discarded material'' applies to unused military munitions. This proposed provision would address the regulatory definition of solid waste in the context of three specific categories of munitions: (1) unused munitions in the military stockpile, (2) used or fired munitions, and (3) munitions being used for their intended purpose.

Additionally, EPA proposes in new § 261.2(g)(4) to characterize munitions at closed or transferred ranges as statutory solid waste under RCRA section 1004(27). However, once DOD promulgated range cleanup regulations under its own standards, this section would be superseded.

1. Unused or Stockpiled Munitions

a. Status of Military Stockpile. According to DOD, the military services currently have 5.6 million tons of conventional munitions stored in magazines at installations within the United States. Of these munitions, more than 5.1 million tons (or more than 90%) are in an ''active use'' inventory, and therefore are available for use in training or war. At the same time, however, the Services have a significant volume of munitions in ''demilitarization'' accounts (for example, the Army's Resource Recovery and Disposition Account); munitions in these accounts are generally considered to be excess and unneeded, ''unserviceable'' (and needing further assessment or repair), or obsolete.[4]

According to DOD, approximately 440,000 tons of munitions are stored in demilitarization accounts; under DOD procedures, these materials first undergo evaluation to determine whether they can be returned to service, repaired, sold, or recycled. If these options are unavailable, the munition is then scheduled for destruction. DOD currently considers that its stockpile includes 48,000 tons of munitions scheduled for destruction.

EPA and DOD generally agree that munitions stored in the active use military stockpile do not meet the definition of ''discarded material'' or ''solid waste'' in 40 CFR 261.2, and therefore are not regulated under RCRA subtitle C. There is also general agreement that obsolete or excess munitions meet the regulatory definition of solid waste at the point when they are received for destruction or disposal—for example, at open burning/open detonation units or incinerators. Despite agreement on these points, however, there has been considerable discussion over whether and how RCRA standards apply to munitions slated for destruction before they are received at a treatment or disposal site.

This discussion has centered primarily on defining what event or munition status indicates a DOD ''intent to destroy.'' EPA has had comparable discussions with industry over when commercial products become a solid waste. The Part 261 regulations regarding commercial products in storage rely largely on the ''intent'' of the owner to discard; over the years, EPA has sought to establish simple, consistent, and enforceable principles regarding the point at which commercial products are intended to be ''discarded''—notably these are (1) when the products are removed from storage for disposal, or treatment prior to disposal, (2) when the owner declares them to be hazardous waste, and (3) when they are deteriorated or damaged (e.g., leaking) to the point they cannot be used, or reprocessed for beneficial use. In today's proposal EPA has sought to apply these general principles to military munitions.

In proposed § 261.2(g)(1)(i) through (iv), EPA clarifies this issue by identifying the specific circumstances under which an unused or stockpiled munition would be considered to be solid waste for regulatory purposes.

b. Proposed § 261.2(g)(1)(i)—Munitions that have previously been disposed of. Under proposed § 261.2(g)(1)(i), a munition becomes discarded, and therefore a solid waste when it is ''abandoned by being disposed of, burned, or incinerated, or treated prior to disposal.'' Thus, open burning/ open detonation or incineration of unused munitions (except when done during an emergency response or during training in use of a product) is regulated under the RCRA subtitle C standards for hazardous waste, including the 40 CFR Part 270 permit requirements (assuming the waste munitions meet the § 261.3 definition of ''hazardous waste''). Similarly, unused munitions that were buried or landfilled in the past are solid waste, and, if hazardous, they would become subject to applicable subtitle C regulation when unearthed and further managed. EPA emphasizes that this proposed section would not bring use of military munitions for their intended purposes—e.g., the firing of military rounds—within the scope of subtitle C. The use of a product (in this case a military munition), in EPA's view, is not a waste management activity and does not constitute abandonment for the purposes of proposed § 261.2(g)(1). (''Discarded material'' in the context of munitions used at military firing ranges is addressed in proposed § 261.2(g)(4), which is discussed below.)

c. Proposed § 261.2(g)(1)(ii)—Munitions removed from the stockpile for the purposes of disposal/destruction. Proposed § 261.2(g)(1)(ii) would specify that a military munition becomes a solid waste for regulatory purposes when it is removed from storage in a military magazine or other storage area[5] for the purposes of destruction, disposal, or treatment prior to disposal.

Stockpiled munitions, in EPA's view, are unused ''products'' comparable to unused commercial products stored by manufacturers or their customers. Under RCRA, unused products do not become ''waste'' until they become ''discarded material,'' that is, until an intent to discard the material can be demonstrated. Even if a commercial product's shelf life has expired, or it can no longer be used for its intended purpose (for example, because of physical deterioration), it may be reprocessed or used for other purposes. Thus, it would not necessarily be considered ''discarded material'' or solid waste.

Stockpiled military munitions are in a comparable situation, and the classification of a munition in one of the various DOD ''demilitarization'' accounts does not, in EPA's view, constitute a decision to discard the material because, pursuant to DOD's practices, such a classification does not necessarily evidence an intent to discard. Ammunition classified as ''unserviceable,'' for example, may be returned to service, after further review, or in some cases after reprocessing.

[4] The Services also assign ''condition codes'' to ammunition. For example, the Army's *Ammunition Surveillance Procedures* (November l990) provides designations for ammunition such as Condition Code H (''Material that has been determined to be unserviceable and does not meet repair criteria'').

[5] The term ''military magazine or other storage area'' refers to all types of military munitions storage units, including outdoor or open storage areas, sheds, bunkers, and earth-covered and above-ground magazines allowed under the DOD Explosives Safety Board (DDESB) standards (DOD 6055.9–STD), which are mandatory for use by all DOD components.

Munitions in the demilitarization accounts (such as the Army's Resource Recovery and Disposition Account) may also be sold for non-military purposes, or to nations that still maintain older weapons systems. Even munitions scheduled for disposal may still have a deterrent purpose and may be called back into service in cases of emergency. Therefore, in EPA's view, inclusion of a munition in a ''demilitarization'' account or a military determination that a munition is ''unusable'' for its intended purpose does not constitute a decision to dispose of it.

For these reasons, today's proposal makes it clear that unused munitions stored in military stockpiles are not considered ''solid waste'' subject to subtitle C (except as provided in § 261.2(g)(1) (iii) and (iv) discussed below). Instead, EPA has sought to establish a simple, consistent, and enforceable point where a munition would be considered ''discarded.'' In EPA's view, the most appropriate point for military munitions (and the point that is most consistent with the regulation of commercial/industrial products) is when the material is finally removed from storage for the purpose of disposal or treatment prior to disposal. In practical terms, this provision would mean that storage of stockpiled munitions would, for the most part, not be subject to RCRA regulation (with exceptions described below); however, once a munition was removed from a magazine *for the purpose of destruction or disposal* it would become solid waste potentially regulated under subtitle C of RCRA.

EPA emphasizes that this provision would trigger RCRA coverage only where a decision to destroy the munition had clearly been made. In many cases, munitions classified as ''unserviceable'' are removed from storage and sent to central arsenals for evaluation to determine whether they are in fact unusable, whether they can be sold for use, whether they can be recycled or processed for other uses, or whether they should be disposed of. In these cases, the munition is not being shipped for the purposes of destruction or disposal, but rather for evaluation. The munition would be handled as a waste only if no further evaluation would take place and the decision to destroy had already been made.[6] Similarly, a munition may be removed from storage for the purpose of recycling or materials recovery without triggering RCRA.

EPA recognizes that it may not always be easy to determine whether a decision to destroy the material has been made; however, it believes that the status of a munition removed from storage will generally be clear. In some cases, a decision to destroy might be evidenced by a specific order or document. In other cases, the intent to destroy the munition would be obvious even in the absence of such an order. For example, a munition sent to a commercial, non-military hazardous waste facility is presumably a waste (unless the facility is also a commercial dismantling/reclamation facility). Similarly, if a rocket undergoing demilitarization is disassembled, and the propellant shipped off-site to an incinerator at another installation, the intent to destroy the propellant would be clear. In both cases, the point of generation of the waste would be when it was removed from storage. EPA emphasizes, however, that the rocket disassembly process itself is not a form of RCRA ''treatment,'' and only the propellant that is incinerated would be a solid waste. More generally, when a munition is disassembled, the removal of a component from the munition does not demonstrate or suggest an intent to discard that component. These activities are therefore not considered waste management under RCRA (unless the material is already classified as a waste, and the disassembly is carried out to prepare for waste disposal.)

To summarize, the disassembly of a munition and recovery of explosives or propellants and other components for reuse does not constitute a waste management activity. In fact, these operations constitute a large part of DOD's Resource Recovery and Recycling Program, and EPA strongly supports and encourages this program. EPA views recycling of unused military munitions as being directly analogous to the reclamation of commercial chemical products (see 40 CFR 261.2(c) and (e) and 261.33). Thus, the position EPA is taking in today's rule on military munitions recycling or materials recovery operations is consistent with the position it has taken with regard to the management of commercial chemical products.

Examples of munitions recycling activities performed by DOD that would not be regulated under RCRA include the following:

(1) Recovery of explosive filler, together with scrap metal sale. Explosive filler material may be removed from munitions by using a heated medium, such as steam, hot water, or air. Further processing may be necessary if the explosive material is contaminated or the end use requires a specific form of explosive. The filler material is then used or reformulated for military or commercial explosives, and the inert metal parts may be reused as is or sold for scrap value.

(2) Reuse of Hazard Class (HC) 1.3 large rocket motor propellent, together with casing reuse or scrap metal sale. The HC 1.3 propellant may be removed from the rocket motor case with a high pressure water jet. The washed-out material and liquor is then processed to remove ammonium perchlorate. The ammonium perchlorate is then crystallized and reused as an ingredient in a large rocket motor propellant formulation, and the motor casing is either used or sold for scrap value.

(3) Reuse of HC 1.1 large rocket motor propellant, together with casing reuse or scrap metal sale. The HC 1.1 propellant is removed from the rocket motor as propellant chips through a dry machining process. These chips are then mixed with other ingredients to produce commercial sector blasting charges for mining or quarrying. The motor casing is, again, either reused or sold for scrap metal.

(4) Reuse of red phosphorus composition. The red phosphorus composition is removed from unserviceable L8A1 smoke grenades for reloading into the new L8A3 grenades.

(5) White phosphorus to phosphoric acid conversion. This process converts white phosphorus to saleable phosphoric acid by integrating an industrial phosphoric acid conversion process to a modified furnace.

The examples of ways in which military munitions may be reused for military and commercial applications, while specific, apply not only to the identified munitions but illustrate how RCRA requirements apply to munitions of similar types. The examples, however, do not specifically address one type of recycling identified by DOD: that is, the processing of an unused explosive to allow its use as fertilizer. In this case, the explosive, arguably, is being applied to the land in lieu of its original intended use and therefore—by analogy to commercial chemical products—its use as a fertilizer would potentially be regulated as waste management (see 40 CFR 261.33). EPA solicits comment on whether this type of recycling is appropriate for military explosives and therefore whether it should be allowed under today's rule.

Of course, treatment or disposal of residual materials generated during the disassembly or processing of unused munitions is potentially subject to

[6] EPA has taken a similar position in the case of pharmaceuticals returned to the manufacturer. See letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste, to Mark J. Schulz, Pharmaceutical Services, Inc., Browning-Ferris Industries, May 16, 1991.

RCRA regulation. In example number 2 above, ingredients remaining after the crystallization of ammonium perchlorate might be incinerated. EPA would consider this incineration to constitute waste management and the materials incinerated to be a solid waste.

Proposed § 261.2(g)(5) in today's rule clarifies these points.

d. Proposed § 261.2(g)(1)(iii)—Leaking or deteriorated munitions.

Proposed § 261.2(g)(1)(ii), discussed above, would define the most common circumstances under which a stockpiled military munition would become a solid waste—that is, when a decision has been made to dispose of it and it is removed from storage for transportation to a disposal site. EPA, however, recognizes (and States and citizens groups have pointed out) that under certain circumstances military munitions in storage may deteriorate to a point where they are no longer ''products'' in any meaningful sense and indeed may present an environmental threat. To address these circumstances, proposed § 261.2(g)(1)(iii) would define a munition as a solid waste if it is ''deteriorated or damaged (e.g., as a result of leaks or broken seals) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes.'' For example, leaking chemical munitions are typically overpacked and placed in separate storage. Further, the stabilizers and chemicals involved have often deteriorated, and these chemicals have no reclamation potential. In EPA's view, these munitions have lost any reasonably possible future uses. Therefore, they should be defined as solid waste, and if hazardous, managed accordingly.

EPA recognizes that there is no specific analogous provision for deteriorated or damaged stockpiled commercial products. EPA believes, however, that commercial products in similar situations without any reasonable future uses or recycling potential would qualify as solid waste under existing regulations. Furthermore, EPA shares commenters' concerns that, when a munition presents a threat because of leakage or physical deterioration and when there is no reasonable possibility of productive use of the material, it should be treated or destroyed as soon as feasible.

e. Proposed § 261.2(g)(1)(iv)—Munitions determined by DOD to be a solid waste. Finally, proposed § 261.2(g)(1)(iv) would make it clear that the military Services or the Department of Defense may identify a stockpiled military munition as a RCRA ''solid waste.'' In this case, the munition (if ''hazardous'') would be subject to hazardous waste regulations. For example, the Department of Defense has previously determined that M55 rockets containing chemical agents are hazardous waste. DOD made this decision because the rockets' delivery system no longer exists, and because DOD decided, for operational reasons, that the rockets would not be used in military operations and that they would not be sold or reclaimed. These rockets are now being regulated as hazardous waste under RCRA interim status or permit requirements. Today's proposal would not affect the waste status of these materials, or of materials DOD in the future classifies as solid waste.

EPA emphasizes that proposed § 261.2(g)(1)(iv) requires a specific declaration by an authorized military official that a munition is a solid waste. As explained earlier, a decision under DOD's classification system that a munition is ''unserviceable,'' or the transfer of a munition into a ''demilitarization'' account would not constitute a decision that a munition is a solid waste.

f. Rationale for EPA's Proposed Approach. EPA's proposed approach is based primarily on the recognition that stockpiled munitions are ''products,'' generally outside the scope of RCRA; that Congress intended for EPA to develop a ''fair and coherent'' approach regarding RCRA's application to munitions; that DOD has in place extensive storage standards that, in providing for safety, are also protective of human health and the environment; and that the military Services' safety record in storing munitions has been good. EPA further believes that there is no compelling environmental or legal reason to develop an intent-based test for defining when munitions become hazardous waste. Indeed, to do so would significantly increase the regulatory burden not only on DOD, but also on regulators, and it would certainly complicate DOD's management of the military stockpile. These reasons are discussed in more detail below.

In the first place, the proposed approach would be simple, straightforward, and enforceable. Munitions while stored in the stockpile would generally be excluded from RCRA regulation. Alternative approaches that would divide munitions in the military stockpile into ''waste'' and ''non-waste'' munitions (based on one or another set of intent-based criteria) would be likely to provide little certainty, and would be difficult to implement in the field. EPA is particularly concerned about approaches that would lend themselves to site-specific disagreements over whether a particular stockpile munition is or is not a hazardous waste. Congress charged EPA with developing a ''fair and coherent approach to identifying when military munitions become a hazardous waste,'' and expressed the opinion that, without such regulation, RCRA jurisdiction over munitions ''will likely be left to the courts.'' (See H.R. Conference Report No. 886, 102d Cong., 2d Sess. 29 (1992). See also Cong. Rec. H9137 (daily ed. September 23, 1992), Floor statement of Rep. Ritter). In light of this directive, EPA has sought to draw as clear and universal a line as possible in this proposal, and to avoid definitions that are likely to lead to debate in their application, or to require specialized military expertise to interpret. EPA's goal has been to define a consistent national standard, which would eliminate the need for complicated site-specific judgments that may have little if any relevance to protection of human health and the environment.

Today's proposal on military munitions is also consistent with EPA's approach under RCRA to other products. To be sure, the proposal does not precisely parallel EPA's approach to commercial products, but the basic approach is the same; in both cases, unused products are generally excluded from RCRA jurisdiction. The only substantive differences between the proposal and the current definition of solid waste, as it applies to ''commercial'' products, are that: (1) RCRA jurisdiction for military munitions would generally be triggered by the actual removal of a munition from storage for disposal or treatment, rather than by evidence of an ''intent'' to discard the material before its removal from storage, and (2) leaking munitions that could not be returned to use would be explicitly defined as solid waste. EPA acknowledges these minor differences, but believes they are appropriate in the case of military munitions, given Congress's mandate that EPA develop specific regulations for military munitions that reflect the special circumstances surrounding these materials.

Moreover, EPA has chosen the proposed approach because it involves minimum interference with the military's established system for managing stockpiled munitions, and it would not conflict with the Services' logistical needs or constraints. Munitions in both the active and demilitarization accounts are managed

under the same storage and transportation standards, and they are often stored together in the same magazines. The threat from a specific munition does not change when it is determined to be ''unserviceable''; when it is reclassified into a demilitarization account; or when it is scheduled for treatment or disposal. Today's proposal recognizes the efficiency of managing the military stockpile within the current system. Under the proposal, the demilitarization process would remain governed by logistical, safety, and strategic considerations; munitions slated for destruction or treatment could be removed from magazines and shipped to waste treatment or disposal facilities according to an orderly process, rather than by regulatory schedules.

Finally, EPA's proposal reflects the Agency's preliminary judgment that RCRA regulation of stockpiles of largely military ''products'' (only a very small portion of the stockpile would be ''waste'') would not significantly increase protection of human health and the environment. The military's storage standards and practices for munitions generally provide protection that is comparable to or better than RCRA regulation would provide. The storage of military munitions is regulated under standards overseen by the Department of Defense Explosives Safety Board (DDESB), an organization independent of the Services within DOD that was established by Congress and reports to the Secretary of Defense. EPA and one interested party, representing certain members of the waste treatment industry, have reviewed the DDESB standards in detail. Both concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all respects. There were gaps in certain procedural requirements, and in areas unrelated to risks from explosive materials—e.g., in requirements to coordinate with local authorities or in closure requirements. At this point, however, EPA is not convinced that RCRA standards would substantially increase protection.[7] (Both EPA's and the commenter's review is available in the docket of today's rulemaking.)

In addition, the military's safety record for the entire stockpile has been good. According to DOD, there have been 27 ''incidents'' involving stockpiled munitions over the last twenty years, with only l3 of these involving structural damage to a bunker or storage unit. This represents a very low accident rate, considering the enormous quantity of munitions stored and handled (currently 5.7 million tons of conventional munitions in 28,122 storage units) and the high inherent hazard of the material. EPA questions whether RCRA regulation would improve this safety record. (Indeed, RCRA regulation of ''waste'' portions of the stockpile might increase risk, by leading to increased movement of munitions.)

2. Munitions That Have Been Used/Fired That Are Subsequently Discarded

Proposed § 261.2(g)(2) addresses munitions that have been used or fired and then are subsequently recycled or disposed of. This section clarifies that RCRA management standards apply to the recycling or subsequent disposal (assuming the material is hazardous).

Specifically, § 261.2(g)(2) states that munitions that have been used or fired are solid waste when they meet the definition of discarded material in § 261.2(a)(2), except as provided in § 261.2(g)(3). In other words, a used or fired munition is considered a solid waste if it is abandoned or recycled, or if it is inherently waste-like (i.e., it meets the definition of ''discarded'' in § 261.2(a)(2)). But the proposed language explicitly states that this definition does not include munitions used for their intended purpose (i.e., munitions covered under § 261.2(g)(3)). As explained below, munitions used for their intended purpose are products not subject to RCRA regulation. Under this approach, munitions that have been fired and can no longer be reused would be potentially subject to Subtitle C regulation if removed from their landing spot and then transported off-range and stored, reclaimed, treated, or disposed of (assuming they are ''hazardous''). For example, former installations no longer under military control (i.e., Formerly Used Defense Sites or FUDS) often contain unexploded ordnance or other hazardous material. Used or fired munitions removed from their landing spot and transported off-site would have to be handled under RCRA subtitle C (assuming they are ''hazardous''). Similarly, used or fired munitions resulting from military research or training exercises, when removed from firing ranges and sent off-range for destruction would be considered solid waste. (As discussed below, use of a product for its intended purpose is not considered abandonment; § 261.2(g)(3) specifies certain activities that fall within the intended use of military munitions.)

3. Munitions Used for Their Intended Purposes

Under RCRA, the use of products for their intended purpose does not constitute waste management and is not subject to regulation. For example, RCRA does not regulate the use of pesticides by farmers, even though pesticides are discharged to the environment during use (see 40 CFR 262.10(d) and 262.70). By the same logic, RCRA does not regulate the use of dynamite or other explosives during construction. Similarly, EPA has consistently held that the use of munitions (military or otherwise) for their intended purpose does not constitute waste disposal, and does not require RCRA permits. Proposed § 261.2(g)(3) (i) through (iii) clarifies this point and provides specific examples of military activities that are excluded from RCRA regulation.

a. Proposed § 261.2(g)(3)(i)—Military training exercises. Proposed § 261.2(g)(3)(i) clarifies that the use of munitions in the training of troops and explosive ordnance disposal (EOD) personnel is not regulated under RCRA.

[7] Strategic Environmental Services, Inc., in comments to EPA, cited three particular areas where it concluded that DDESB standards were less stringent than RCRA's: preparedness requirement with the local community, closure requirements, and inspection frequency. EPA believes that the differences in approach between the standards in these areas is of limited significance. First, under RCRA preparedness requirements, a facility must attempt to make arrangements with local police, fire departments, emergency response teams, and hospitals to allow them better to respond to emergencies. If these local institutions do not respond to overtures from the facility, however, the facility has satisfied its obligation. Military installations already have extensive contingency plans for munitions emergencies, and responsibility for responding to these emergencies generally falls on military rather than local personnel. Therefore, coordination with local response authorities is less important than it is with civilian facilities. Furthermore, it is unclear what value would be added by preparedness plans that applied only to that part of an installation's munition stockpile that was classified as waste, and not to other munitions on the installation—especially given that the active stockpile would typically dwarf ''waste'' munitions in quantity. The situation is different for stockpiled chemical munitions—partly because of the greater possibility that an emergency would have off-site effect, and partly because of heightened public concern. However, Congress has already required the Secretary of Defense to establish a chemical weapons stockpile safety contingency plan (National Defense Authorization Act for Fiscal Year (FY) 92) and the Secretary of the Army to establish citizens' commissions for states with stockpile sites (National Defense Authorization Act for FY93). Second, as to closure requirements, it is unclear how typical munitions bunkers would lead to contamination problems. In any case, however, storage magazines are subject to the decontamination and remediation requirements of CERCLA 120(h)(3) when the property is transferred, and DOD is required to clean up environmental contamination under the Defense Environmental Restoration Act. Residual contamination is also subject to other cleanup authorities, including RCRA section 7003. Finally, EPA sees no reason why Service inspection procedures for the active stockpile are not adequate for munitions slated for disposal.

This is because such training constitutes the normal use of a product, rather than waste disposal.

The proposed language also makes it clear that training includes training troops in the destruction of excess propellant and other munitions, when that destruction is integral to the product's use. Propellant used for artillery and mortar rounds comes in packaged allotments that vary by the type of weapon, round, and propellant. Each allotment is made up of individual increments to allow troops to vary the distance a shell is fired—the more increments used, the farther the shell is fired. The Services generally package the allotments for wartime use, that allow maximum firing capability. During firing exercises (whether for training or during wartime), the full allotment is often not needed. In these circumstances, military procedures for safety reasons require that unused increments of propellant be burned. (In wartime, procedures specify that the excess propellant be burned at the closest safe point.) To ensure that troops can safely destroy propellant during wartime, according to DOD, military training exercises involving artillery and mortar rounds typically include the burning of excess propellant.

In EPA's view, the training of troops in the wartime use of munitions is a legitimate use that lies outside the scope of RCRA; the Agency has no reason to question DOD's position that training troops in the safe destruction of excess propellant constitutes legitimate training. Indeed, such training exercises typically follow detailed protocols for training troops in handling and burning of excess propellants. EPA in the past has concluded that training in the destruction of excess propellant is not subject to RCRA regulations, and is proposing in today's rule to codify this interpretation.

Critics of DOD have expressed concern over the burning of excess propellant, pointing out that the amount of excess propellant destroyed may equal or exceed the propellant actually used in firing the weapons. Concerns of the public have particularly focused on air emissions, although the burning of propellant directly on the ground can lead to soil (and possibly groundwater) contamination. For this reason, the Services often conduct the burning in lined trenches. (In some cases, this precaution has been required by state regulators.) In other cases, local opposition to burning of excess propellant has led individual installations to abandon the practice (and in at least one case to abandon training altogether), or reduce the number of increments used.

Some states and citizens groups have also argued that such burning could lead to sham training, when the primary purpose is really waste disposal. In enforcing today's proposal, EPA might look at whether propellant burning during a specific exercise was part of legitimate training—for example, that troops were in fact being trained and that the training was done in accordance with a specific training manual or training procedures. However, if these tests were met, EPA would consider the destruction of excess propellant to be normal use of munitions in a training exercise and not regulated under RCRA. In response to the concerns over sham training, DOD has suggested the existence and use of training manuals, and appropriate documentation of training activities should be accepted as evidence of training. EPA agrees that, should activities in a specific training exercise be challenged, such procedures and documentation would provide evidence that the activity did not involve waste disposal.

More generally, EPA appreciates the concerns of critics of DOD on this issue, but it tentatively accepts DOD's argument that the practice is necessary for effective training. At the same time, however, EPA solicits comments on this issue, in particular whether it is appropriate or necessary, under RCRA, to impose specific restrictions on burning of excess propellant, and if so what those restrictions should be.

b. Proposed § 261.2(g)(3)(ii)—Weapons testing. Today's proposal also clarifies that munitions used in weapons research, development, testing, and evaluation programs are not regulated under RCRA. Testing munitions, or using munitions to test a weapon system, to determine their performance capabilities clearly falls within the definition of use of a material/product for its intended purposes. EPA also considers removal of a used or fired munition from a testing or training firing range for further testing and evaluation to be within the definition of use of a material for its intended purpose.

c. Proposed § 261.2(g)(3)(iii)—Range clearance operations as a result of training or weapons testing. The military services often conduct range clearance exercises as a result of weapons testing or training at firing ranges. During these exercises, military specialists sweep ranges for debris and unexploded ordnance, which may be destroyed on-site or shipped off-range for treatment. EPA considers range management to be a necessary part of the safe use of munitions for their intended purpose; thus the range clearance activity is an intrinsic part of the training or testing exercise. Furthermore, from an environmental perspective, it makes no difference whether ordnance explodes on impact or is subsequently detonated by an EOD specialist. Therefore, today's proposal would exclude range clearance exercises from RCRA subtitle C regulation. As mentioned earlier, however, when shipped off-range for destruction (but not for further evaluation) the debris or UXO is a solid waste, and if a hazardous waste, potentially subject to the RCRA subtitle C requirements.

4. Discharged Military Munitions at Firing Ranges

In today's proposal, as well as in previous statements, EPA has taken the position that the discharge of a weapon does not constitute ''waste management'' for the purposes of RCRA. This position is reflected in proposed § 261.2(g)(3), discussed above, which excludes munitions used for their intended purposes from the definition of solid waste. At the same time, however, this proposal provides that spent munitions left in the environment may at some point become ''discarded,'' in a RCRA statutory sense, and therefore may be potentially subject to various RCRA remedial statutory authorities. The most important of these authorities are: (1) RCRA section 7003, which authorizes EPA to require remedial action in cases in which solid wastes may present an imminent and substantial endangerment; (2) RCRA sections 3004(u) and (v), which require corrective action for releases of hazardous waste or constituents from any solid waste management unit at treatment, storage, or disposal facilities seeking a RCRA hazardous waste permit, and (3) RCRA section 3008(h), which allows EPA to require corrective action at interim status facilities.

Proposed § 261.2(g)(4) would specify how these authorities would apply to discharged munitions found at military firing ranges and impact areas. Proposed § 261.2(g)(4)(i) states that munitions left at closed ranges, or at ranges transferred out of military control, are discarded material. ''Closed'' ranges are ranges taken out of service by the military as ranges and put to new uses incompatible with range activities—e.g., as storage or warehouse areas. However, an ''inactive'' range—i.e., a range that is not currently being used, but that is still considered by the military to be a potential range area or that simply has not been put to any new use

incompatible with range activities—would not be considered ''closed.''

In the case of a closed range, the site is no longer being used as a range and it has been put to a new use incompatible with range activities. Under the proposal, any remaining munitions and debris that are left in place would be considered discarded and therefore such munitions and debris would be a ''solid waste'' according to the RCRA section 1004(27) definition. In the case of transferred ranges, the military no longer has control over the site and therefore the view taken by EPA in the proposal is that any remaining munitions and debris would have in effect been ''discarded.'' This is not to say that the transfer of the property would constitute the act of discarding. Under this approach, the property transfer would simply affirm that the remaining materials on the range could be considered to have been discarded.

This approach to closed and transferred ranges would not be unprecedented. There are a number of scenarios under which hazardous wastes may be found in the environment, but were not put there through an act or circumstance that was a violation of RCRA or that otherwise subjects those wastes in place to subtitle C permitting or other requirements. A similar example of materials that may be classified as statutory ''solid waste'' under RCRA, but which are not automatically subject to RCRA subtitle C permitting or in-place waste management requirements, are wastes that had been disposed of before the effective date of RCRA. These materials would also potentially be subject to RCRA remedial authorities such as sections 7003, 3004(u) and (v), and 3008(h), or to CERCLA remedial authorities.

Today's proposal, however, contemplates that RCRA regulation of cleanups at closed and transferred ranges would be temporary. The proposal would further provide that, if DOD promulgates, pursuant to DOD's own statutory authorities, rules that allow for public involvement in cleanups of these ranges and that are fully protective of human health and the environment, then these DOD regulations would supersede RCRA regulations. The DOD regulations, rather than RCRA, would then govern range cleanups. EPA would issue a notice at the time DOD's regulations were issued, announcing that DOD cleanup regulations took precedence and that munitions at closed or transferred ranges are not to be considered RCRA statutory solid waste.

This ''sunset'' provision reflects EPA's conclusion that the legal arguments supporting the characterization of munitions on closed or transferred ranges as ''solid waste,'' and the legal arguments opposing such a characterization are finely balanced, with the result that EPA has the discretion to select either interpretation pursuant to section 3004(y). The choice of whether to define such munitions as ''solid waste,'' then, rests with EPA, and the proposal reflects EPA's views of how human health and the environment can best be protected, given the special hazards posed by military munitions.

In fact, the applicability of RCRA corrective action authorities to ranges has long been subject to dispute. The Department of the Army's Regulation 200–1, Environmental Protection and Enhancement, explicitly states that RCRA sections 3004(u) and (v) do not apply to military ranges (AR–200–1, section 6–7(j), April 23, 1990). In its proposed subpart S corrective action regulations, EPA agreed, suggesting that military firing ranges and impact areas ''should not be considered solid waste management units,'' and therefore sections 3004(u) and (v) would not apply (55 FR 30809, July 27, 1990). On the other hand, several EPA regions and States have asserted that these authorities apply to military ranges.

Today's proposal would resolve this question. If adopted, proposed § 261.2(g)(4) would have the effect of bringing munitions at closed ranges and at ranges being transferred from military control under RCRA corrective action standards, if the installation were otherwise subject to RCRA permitting requirements. Under this proposed section, munitions at a closed range would be defined as solid waste, and the range (if it contained munitions or other contaminants) would constitute a solid waste management unit. Releases of hazardous wastes or constituents at or from the range would therefore potentially be subject to corrective action under sections 3004(u) and (v), or 3008(h). On the other hand, active and inactive ranges would not be considered solid waste management units. In addition, proposed § 261.2(g)(4) would provide that, once DOD issued regulations for range cleanup, these DOD regulations would supersede RCRA cleanup authorities.

In practice, RCRA corrective action would generally require an assessment of possible risks and releases at closed ranges. In some cases, sampling of environmental media (for example, soil, ground water, or surface water) might be required. The level of assessment needed would be consistent with the potential risk of exposure. It is important to emphasize, however, that the RCRA corrective action authorities do not automatically require cleanup to specific levels. For example, risks from unexploded munitions might be controlled, where appropriate, through access restrictions. In fact, DOD is already required to address range cleanup as part of its own restoration program. Thus, today's proposal, if adopted, would simply provide EPA or a delegated State with independent oversight of cleanups at RCRA sites, but would not affect the substantive cleanup standards that apply.

Proposed § 261.2(g)(4)(i) specifies that munitions remaining at closed ranges would be solid waste, for statutory purposes. Some may argue that EPA should propose to define munitions on active ranges as solid wastes as well. EPA, however, focused on closed rather than active ranges because it is technically difficult to address munitions on active ranges, and because periodic cleanups (other than range clearance exercises) at these ranges are likely to be of limited environmental value, particularly since the ranges are under direct control of the military and public access is restricted. Also, it could involve risk to cleanup personnel. EPA emphasizes, however, that non-munition releases are unaffected by today's rule. Also, environmental releases from range activities that migrate off-range in ground-water or runoff, including from active ranges, would be statutory ''solid waste,'' and could be addressed under RCRA section 7003 . They could also be addressed under the Clean Water Act or CERCLA.

EPA also considered including munitions on ''inactive'' as well as ''closed'' ranges in proposed § 261.2(g)(4)(i). This approach would have the effect of pushing RCRA sections 3004(u) and (v), and 3008(h), corrective action requirements earlier in the process. EPA, however, has not proposed this approach. The Agency recognizes that inactive ranges may frequently be reused, and questions the value of a formal corrective action process when the area will likely be subject to range use again. Furthermore, such an approach might only encourage installations to continue use of ranges, rather than discontinue their active use, for fear of triggering EPA or State oversight. In any case, any necessary remedial action would be required at the time of change in land use or transfer of the range from military control, since at that point the range would clearly be closed.

There are very substantial legal arguments and, assuming DOD issues

protective standards for range cleanup, compelling policy reasons for EPA to exercise its authority pursuant to § 3004(y) in a way that will not lead to RCRA jurisdiction over range clean up at any stage. In *Barcelo* v. *Brown*, 478 F. Supp. 646, 668–669 (D. Puerto Rico 1979), the District Court held that materials resulting from activities that do not resemble industrial, commercial, mining, or agricultural operations, or community activities fall outside the definition of ''solid waste'' in RCRA. Because ''uniquely military'' activities such as target practice at bombing ranges do not fall into any of these categories, the Court held that such activities were not regulated under RCRA. This conclusion also would be consistent with the approach EPA took in its Subpart S proposal (55 F.R. 30809, July 27, 1990). Thus, the *Barcelo* decision provides a rationale for excluding munitions remaining at firing ranges from the RCRA definition of solid waste. EPA, however, recognizes that the lines between ''uniquely military'' range activities and other activities (for example, target practice at small arms ranges) are not always clear. Therefore, EPA seeks comment on what sorts of range activities are properly considered uniquely military.

Additional legal arguments in favor of this alternative approach have been advanced, including the argument that unexploded military munitions cannot become a ''discarded material'' because DOD is statutorily obligated by 10 U.S.C. 172 and 10 U.S.C. 2701 to address the human health and environmental hazards posed by its munitions and unexploded munitions whenever and wherever encountered. These statutory obligations, according to this argument, make it legally impossible for DOD to ''abandon'' such materials.

DOD has an existing responsibility to address environmental restoration under the ''Defense Environmental Restoration Program'' (DERP) (10 U.S.C. 2701 et seq.), and CERCLA response authorities, and is generally responsible for preventing hazardous conditions related to munitions under 10 U.S.C. 172. EPA understands that DOD intends to propose clean up standards and a clean up process under these authorities in a rulemaking to commence by January 31, 1996, and to be completed by October 31, 1996. DOD intends that the rulemaking will be an open process, with ample opportunity for the active participation of the States and of the public. Further, the remedy selection and implementation process in the rule will include a significant role for the affected states and the interested public. The proposed rule will specifically address the role of State regulatory agencies and the interested public. DOD's proposed rule will address the nature of the role of the States and will request comment on this important issue. DOD will conduct this rulemaking in consultation with EPA. The rulemaking is to fully involve the public and the States and adequately address the safety, health, and environmental concerns posed by munitions on closed and transferred ranges.

With the promulgation of such a rule, EPA believes that the proposed designation of munitions on closed or transferred ranges as a solid waste would be unnecessary. In this case, cleanups would be governed by clear regulations that are issued through a public process and that reflect the unique explosive safety considerations associated with munitions and the need for environmental protection. Therefore, regulation under a separate statute would be unnecessary. Further, if DOD promulgates such rules after EPA's proposed rule becomes final, then EPA believes that the DOD rules should supersede the EPA rule identifying munitions on closed or transferred ranges as solid waste.

Citizens groups have expressed concern that, because CERCLA authorities are limited to ''hazardous substances'' which include ''hazardous waste,'' unexploded munitions might escape CERCLA control if it were not defined as being a solid (or hazardous) waste. EPA believes this concern is unfounded, because it is the Agency's expectation that most unexploded munitions fit within the CERCLA definition of ''hazardous substance,'' independent of whether it is considered a solid waste.

Finally, proposed § 261.2(g)(4)(ii) would define military munitions fired off-range and not promptly rendered safe (if necessary) and retrieved to be solid waste, for the purposes of section 1004(27) of RCRA. Firing munitions that land outside of a range at a military installation would not be considered the intended use of the product (i.e., the munition.) However, today's proposal would be based on the view that a failure to render safe and retrieve a munition that lands off range would be evidence of an intent to discard the munition. Rendering safe might include treatment to prevent explosion as well as destruction of the ordnance. If remedial action were infeasible—for example because the munition was deeply buried or could not be located—the operator of the installation would be required to maintain a record of the event as long as any threat remained.

5. Waste Materials Derived From Munitions Manufacture

DOD and explosives manufacturers have often raised questions about the applicability of RCRA requirements to residues from munitions manufacture or manufacturing rejects. EPA, however, does not believe that munitions manufacture raises special regulatory issues, and it is not proposing to amend the current rules in this area. Instead, EPA's long-standing regulations defining when manufacturing products and secondary materials become solid wastes would continue to apply to residues and other byproducts of munitions manufacture and processing.

These regulations are found in 40 CFR 261.2 and 261.6, and part 266. Under these regulations, ''secondary materials'' from munitions manufacture or processing—including spent materials, sludges, by-products, certain commercial chemical products, and scrap metals[8]—are considered to be solid waste depending on how they are managed (for example, see section 261.2(c)). And, if these materials are also ''hazardous,'' they are regulated under Subtitle C. On the other hand, off-specification ordnance or line rejects are considered products, and not wastes subject to regulation under RCRA. If these off-specification materials or rejects continue to meet the definition of military munitions, today's rule would define when they became hazardous waste.

EPA believes that it would be inappropriate to change these long-standing rules on the definition of solid waste in the context of today's rulemaking. At the same time, however, EPA is considering substantial amendments to its current rules to facilitate the recycling of secondary materials. These amendments would likely apply to secondary materials resulting from munitions manufacturing as well as secondary materials from other industrial and manufacturing operations.

C. Standards Applicable to Generators and Transporters

Today's proposal would make two changes to the RCRA generator and transportation requirements. First, proposed §§ 262.10(h) and 263.10(c) would clarify that persons responding to immediate threats from explosives and military munitions are not subject to RCRA generator and transportation

[8] These terms are defined in 40 CFR 261.1(c) and 261.33.

requirements. This proposal would apply to all explosives emergency responses (military and non-military) as well as to all conventional and chemical military munitions emergency responses. This proposal is discussed in more detail in Section IV.E of this preamble.

Second, proposed §§ 262.10(i), 263.10(d), 264.70(b)(2), and 265.70(b)(2) would exempt stockpiled munitions (that are hazardous wastes under sections 261.2(g)(ii–iv)) shipped off-site to DOD-owned or controlled TSDF under DOD tracking procedures from RCRA manifest requirements. This exemption would apply not only to military personnel, but also to commercial carriers who have signed a compliance agreement with the Military Traffic Management Command, and who operate under the DOD system. This exemption would not apply to the off-site transport of non-stockpile munitions (e.g., excavated hazardous wastes under proposed § 261.2(g)(1)(i) or range clearance munitions), since these materials are not subject to the same stringent DOD off-site shipping controls as are stockpiled munitions. Thus, the off-site shipment of buried or landfilled munitions, UXO, or munition debris would require the RCRA manifest and container markings (if the material were hazardous). The exemption would also not apply to the transport to a commercial (off-site) treatment, storage, or disposal facility.

This proposal to exempt stockpiled military munitions from the RCRA manifest is based on EPA's conclusion that the DOD transportation and inventory controls are at least equivalent to the RCRA manifest controls, and on the safe transportation record of DOD.

The DOD shipping standards and controls provide a ''closed-loop'' system similar to the RCRA manifest. These controls include the following forms: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets; requisition tracking form DD Form 1348; the Signature and Talley Record (DD Form 1907); Special Instructions for Motor Vehicle Drivers (DD Form 836); and the Motor Vehicle Inspection Report (DD Form 626). The DOD Standards, giving instructions on the use of these forms, include: Army Regulation (AR) 55–355—Transportation of Ammunition, Explosives, and Other Hazardous Materials; AR 725–50—Requisitioning, Receipt, and Issue System, Army Material Command (AMC)–R 385–100—Safety Manual; and DOD Directive 6055.13—Transportation Accident Prevention and Emergency Response Involving Conventional DOD Munitions and Explosives. ''A Report to Congress On the Adequacy of Department of Defense Safety Standards for Transportation of Hazardous Materials'' (1989) provides a summary of these controls. These documents are available in the public docket for today's proposal.

Features of the DOD transportation system include pre-trip routing plans, safe havens and secure holding areas for vehicles experiencing difficulties or for overnight storage, safe haven hotline, satellite motor surveillance and tracking, shipper seals, dual driver protective and escort services, firefighting instructions, and electronic notifications/communications between shipper, carrier, and receiver. DOD munitions shipments also comply with the DOT hazardous materials transportation standards, which address packaging, labeling, marking, placarding, emergency response, training, and shipping documentation (49 CFR 100–179, 350–399). Although the DOT standards are not mandatory for Federal agencies, DOD's standards have made them mandatory (e.g., DOD 4500.9–Transportation and Traffic Management, January 26, 1989). EPA has reviewed these DOD documents and concludes that the resulting procedures, in conjunction with the applicable DOT standards, provide for consistency with the requirements of RCRA section 3003.

As a result of these and other controls, DOD's transportation safety record is excellent. DOD makes approximately 50,000 shipments of military munitions and explosives annually, including shipments for demilitarization. According to the U.S. Army Technical Center for Explosives Safety's Explosives Safety Information Database and the DDESB's Historical Accident Database, there are about 20 minor non-explosive incidents per year (e.g., minor traffic accidents). In the past 20 years, there have been only three accidents involving the munitions cargo itself, and of these three, only one resulted in an explosive detonation.

Regarding the RCRA manifest and marking requirements, DOD is concerned about training its personnel in two separate systems, and maintaining both of these systems simultaneously—one for its own management of the military stockpile, and one (covering a small portion of the stockpile) for regulatory oversight. In addition, DOD is concerned about certain specific aspects of RCRA transport requirements—for example, the prohibition in § 263.12 against storage of wastes in transport in unpermitted ''transfer facilities'' for longer than ten days. According to DOD, this restriction may conflict with its need to sequester shipments of munitions in designated safe havens in case of emergencies or unanticipated transportation difficulties. At the same time, critics of DOD are concerned about any system that is self-regulating, and question the burden that compliance with RCRA would impose.

In light of the concerns of DOD and members of the public, EPA solicits comment on: (1) whether RCRA transportation requirements are needed for military munitions, given DOD's current practices, and whether other alternatives would be appropriate (e.g., the approach EPA adopted for ''universal wastes'' (60 FR 25492, May 11, 1995), which requires recordkeeping and a streamlined tracking system for certain recycled wastes), (2) whether transport of unused munitions (i.e., munitions in the stockpile) going for disposal should be handled differently from used or previously disposed of munitions, (3) whether other modifications (besides the manifest and marking exemptions) should be made to RCRA transportation requirements to address DOD concerns, and (4) whether shipment of munitions from FUDs sites or shipment to commercial waste management facilities should also be exempted from transportation requirements.

EPA has not proposed other amendments to generator or transporter standards for waste munitions. DOD has raised concern that, under today's proposal, compliance with generator standards could be complicated and expensive, particularly because of 40 CFR 262.34 requirements for contingency plans, inspections, personnel training plans, and tank or container storage. EPA emphasizes that facilities with military magazines used to store stockpiled munitions would not be subject to these requirements. These requirements apply to generator facilities that *accumulate* hazardous waste. Since in most cases a stockpiled munition in storage would not be regulated as waste until it was removed from the magazine, the facility (and the magazine) would not be subject to accumulation standards. Instead, installations removing stockpile munitions from storage for the purposes of disposal would be subject to the following standards: (1) Determining if the waste were hazardous and determining treatment requirements; (2)

obtaining a RCRA identification number; (3) preparation of a RCRA biennial report and RCRA section 3016 biennial report; and (4) waste minimization program certification under RCRA section 3002(b). EPA solicits comment on the appropriateness of these requirements and whether they are necessary.

D. Storage of Military Munitions

In enacting RCRA § 3004(y), Congress sought to ensure that management standards for waste military munitions under RCRA would not be inconsistent with safety standards established under 10 USC § 172. In the development of the FFCA, EPA and DOD jointly took forward a legislative proposal to provide for better integration of the DDESB explosives safety regulations and the specific requirements of the RCRA regulations. Although the specific statutory language of RCRA § 3004(y) does not address integration of the RCRA standards with the DDESB explosives safety standards, this point was spoken to during the legislative development process and appears throughout the legislative history for RCRA § 3004(y).

Today's proposal includes a new subpart EE in 40 CFR Parts 264 and 265 for military magazines storing hazardous waste munitions. This subpart combines the environmental features of the current RCRA storage unit standards with the DOD Explosives Safety Board (DDESB) munitions storage magazines standards to eliminate potential inconsistencies or conflicts between the RCRA and DDESB standards. The proposal does not require that all munitions be stored in magazines meeting these standards, but rather, provides an alternative for permitting the storage of military munitions waste under RCRA. Depending on the explosive hazards, military installations may still seek a permit and store waste munitions under the already existing 40 CFR parts 264 and 265 standards for other types of storage units, including containers (subpart I), tanks (subpart J), containment buildings (subpart DD), and perhaps waste piles (subpart L). DOD would apply for a permit under the most appropriate of these sets of standards. The new subpart EE standards would be more appropriate for most military explosive and chemical munitions wastes, including products that DOD determines are a hazardous waste under today's § 261.2(g)(1)(iv) and unexploded ordnance recovered from ranges and moved into storage prior to treatment or disposal.

Consistent with the RCRA standards, today's proposal covers design, operation, monitoring, inspection, closure, and post-closure care, and it addresses the same concerns as do the other RCRA storage unit standards. The design and operating standards set containment and control performance standards to prevent contamination of soil, ground water, surface waters, and the air; they also address the DOD safety concerns to protect against explosions and to minimize the impact if one should occur. The proposal includes a primary barrier or containment system, which may be a bomb shell, a protective casing, a storage container, or a tank. For non-liquid wastes stored outdoors or in open storage areas, the unit design and operation must provide that the waste will not be in standing precipitation. This may be accomplished by a number of design and operating features, including a sloped impervious base or a pervious base, and/or waste elevation.

For those few military munitions wastes that are liquids, in addition to the primary barrier or container, the unit would have to provide a secondary containment system. The secondary containment system design, operation, controls, and monitoring features may include a combination of sumps, pumps, drains, slope, double-walled containers or tanks, and/or elevated waste or other features that provide that any released liquids or precipitation are contained and promptly detected and removed from the waste area.

The proposal covers the three basic designs of the DDESB storage standards: (1) earth-covered magazines (which are frequently used for shock sensitive and other munitions), (2) above-ground magazines (which might be used for munitions that do not pose a mass detonation or fragment producing hazard), and (3) outdoor or open storage areas (typically for munitions that do not pose a significant potential for explosion).

Monitoring and inspections would be required to assure that the containment systems and controls are working as designed, that the wastes are stable, and that no contaminants that might adversely affect human health or the environment are being released from the magazine. In addition, all hazardous waste munitions would have to be inventoried at least annually, which is consistent with current DOD requirements.

The closure standards mirror the other RCRA storage unit closure standards, requiring waste and contaminant removal and containment system decontamination.

In addition to the subpart EE approach, EPA is considering and solicits comment on three alternative approaches.

Under the first alternative, EPA would defer regulating the storage of waste military munitions under RCRA and subject them only to the explosives safety standards developed by DDESB and Services. DOD believes that this is statutorily permissible under the definition of hazardous waste found in RCRA § 1004(5). This definition states that a ''hazardous waste'' is a ''solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' With respect to the first criterion, DOD maintains there is no evidence that waste military munitions in storage cause or contribute to an increase in mortality or illness (save for the case of an accidental detonation of those munitions, which the DOD's excellent safety record shows is unlikely). Regarding the second criterion, DOD believes that the existing DOD controls over the storage and transportation of all munitions, including waste munitions, are adequate to prevent waste military munitions from posing a substantial or present threat to human health or the environment.[9]

DOD's underlying rationale for this approach is as follows. The regulatory program developed by EPA in response to the RCRA mandate establishes standards for the storage of wastes both by those who generate the waste and those who provide permanent long-term storage, treatment, or disposal. These regulations were designed from the outset to address problems stemming from waste management at, for example, industrial operations that, prior to RCRA, were largely unregulated. Hence, EPA has historically examined the consequences of ''plausible mismanagement'' scenarios since there were no other controls over the management of these wastes. DOD believes that the case of military munitions is fundamentally different in that there are existing statutory

[9] This logic does not extend to the treatment or disposal of waste munitions where EPA believes that full RCRA compliance is appropriate to protect human health and the environment.

authorities and regulatory programs addressing the storage of military munitions, including waste military munitions. The design and operation of all DOD ammunition storage units are conducted in compliance with standards set by DDESB and Service-specific regulations and implementing procedures. While these standards have safety as the primary concern, as explained earlier in this preamble, EPA and one interested party have reviewed the DDESB standards in detail and concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all respects. There were gaps in certain procedural requirements and in areas unrelated to risks from explosive materials (e.g., in requirements to coordinate with local authorities or in closure requirements). At this point, neither EPA nor DOD is convinced that application of the RCRA standards in addition to DDESB and Service-specific standards would substantially increase protection of human health or the environment.

For example, all military munitions-related operations, including those involving waste military munitions, are conducted in accordance with an approved Standing Operating Procedure (SOP) that provides detailed guidance on how personnel are to complete a specific activity. These SOPs address a wide variety of issues including, but not limited to: safety, security, environmental protection, and quality assurance. Each SOP must be approved by different functional areas at the installation, including: operations, safety, industrial hygiene, environmental compliance, security, quality assurance, and command representatives. Personnel implementing these SOPs are required to be trained and certified as qualified to perform the task to which they are assigned.

Munitions storage units are also required to be inventoried on at least a yearly basis; however, some munitions (i.e., security class I or II) require inventory more frequently.[10] During these inventories, in addition to counting the munitions present, the organization conducting the inventory updates other data elements in the record. Discrepancies are addressed through a research, investigation, and reconciliation process. All inventory-related activities are overseen by an independent quality control and quality assurance organization. Accounting procedures for these munitions are managed through two separate and distinct data systems, one at the installation and one at a central repository. The records kept at the installation include: quantity, location, ownership (i.e., specific organizational element within DOD), physical condition, and current inventory status.

The actual storage procedures for military munitions are based on four factors that relate to the physical and chemical characteristics of these materials: (1) compatibility grouping; (2) hazard class; (3) net explosive weight (NEW); and (4) quantity distance formulae. These are contained in the DDESB standards ''DOD Ammunition and Explosives Safety Standards'' DOD 6055.9–STD, which may be obtained by contacting Ms. Lydia Sanchez, DOD Explosives Safety Board, 2461 Eisenhower Ave., Rm. 856–C, Alexandria, VA 22331–0600, or by E-mail at SANCHEZLY@DDESB.ACQ.OSD.MIL, or from the EPA docket for today's rule.

DOD also argues that the proposed approach in this first alternative is consistent with other aspects of RCRA, other findings in law, and the approach taken in other regulatory matters addressed by the Federal government.

DOD points out that the DDESB standards for the storage of munitions were subjected to judicial review in Pratt v. Hercules, Inc., 570 F. Supp. 773, Cir. 1982. In this decision the court held: For reasons cited in the court's earlier analysis * * * this court finds that the standards promulgated by the DDESB * * * were sufficient to comply with the mandate (10 U.S.C. 172) of eliminating undue risk of harm to those (inside and) outside the (facility). Further, the Occupational Safety and Health Administration has recognized the statutory authority of DDESB and their expertise in establishing requirements for the safe storage of military munitions. In a November 8, 1990, rule OSHA stated: The DDESB has the final review and approval authority for any engineering changes at government owned facilities to assure that they are consistent with explosives safety standards and do not increase explosive risk (55 FR 46948, November 8, 1990).

The most important piece of evidence in support of DOD's position is the Services' excellent record in providing for the safe storage and transportation of military munitions, as discussed elsewhere in this preamble.

In addition, DOD believes that such an approach is wholly consistent with the President's initiative to reform Federal regulations to eliminate unneeded, duplicative, or superfluous requirements and is also entirely consistent with the President's requirements for promulgation of new regulations, as set forth in Executive Order 12866. Executive Order 12866 requires that any Executive Branch agency consider, as part of developing new regulations, whether existing regulations (or other laws) have created or contributed to the problem that a new regulation is intended to correct, and whether those regulations (or other laws) could be modified to achieve the intended goal of regulation more effectively.

For these reasons, DOD asserts that waste military munitions do not have to be managed in accordance with RCRA standards for the storage of hazardous waste so long as they are stored in accordance with the regulations established by DDESB and the Service-specific implementing procedures and requirements. As a separate matter, however, to meet the obligations imposed by Executive Order 12866, DOD is working with EPA to address those limited areas in the DDESB standards where EPA has noted differences between the DDESB standards and RCRA standards. Therefore, EPA solicits comments as to what specific requirements are needed to make the DDESB standards consistent with RCRA.

The second alternative approach would specify that waste munitions transported and managed in accordance with DDESB standards would not be an RCRA hazardous waste, and therefore would not be subject to Subtitle C standards. RCRA section 1004(5)(B) defines as ''hazardous'' those wastes that may present a hazard ''when improperly * * * managed.'' In addition, section 3001 of RCRA authorizes EPA to determine whether to designate a waste as ''hazardous.'' In determining whether a specific waste should be designated as ''hazardous,'' EPA traditionally considers plausible ''mismanagement scenarios.'' If significant risk were likely to occur under these scenarios, EPA would designate the waste as hazardous. The Agency, however, believes that it is not required to consider implausible mismanagement scenarios in determining whether a waste is hazardous. Thus, if mismanagement of a particular waste is implausible even without regulation under Subtitle C, EPA believes it has authority to refrain from regulating the waste under that subtitle. Under this approach, EPA would take into account DOD's record in storing waste munitions and DOD's existing storage standards in

[10] These are items with a high intrinsic value and items for which additional security procedures are required to prevent their theft.

determining whether it was necessary to regulate waste military munitions as hazardous. Once these controls are taken into account, it would be argued that mismanagement of waste munitions is unlikely and regulation of these materials under Subtitle C is redundant.

EPA is considering this approach in several other rulemakings and will be discussing the legal rationale in detail in those rulemakings. A more detailed legal discussion will be provided in EPA's forthcoming Hazardous Waste Identification Rule proposal, scheduled for publication in November 1995. Where it is relying on this approach, EPA typically intends to prescribe specific conditions or procedures to ensure that a waste would not be mismanaged. In the case of military munitions, EPA is considering a comparable approach. Under this approach, EPA would specify that waste munitions were not ''hazardous'' as long as they were stored in compliance with DDESB standards. Failure to store waste munitions in compliance with these standards would, in effect, render the material ''hazardous'' and constitute illegal management of hazardous waste.

Under the third alternative, EPA would not establish special performance standards for waste military munitions under 40 CFR Parts 264 and 265 Subpart EE; instead, EPA would simply specify in Parts 264 and 265 that storage of waste munitions must meet DDESB standards. Waste storage units at interim status facilities would automatically be required to comply with these standards. For permitted units, EPA or the State would not specify particular standards in the permit, but would simply cite DDESB standards. This approach would allow EPA or State regulators directly to enforce DDESB standards, but would eliminate any possible inconsistency or redundancy between military and EPA standards.

EPA took essentially the same approach in its regulations of underground storage tanks in 40 CFR Part 280. In this regulation, the Agency stated that compliance with the specific industry codes constituted compliance with EPA technical standards. One traditional concern with this general approach is that industry standards change from time to time, complicating regulatory referencing. In the third alternative approach under consideration in today's proposal, EPA would not expect to revise its RCRA standards every time the DDESB changed its standards. To do so would not only require constant EPA rulemaking, unnecessarily consuming limited resources; more important, perhaps, it would foster enormous confusion, because there would always be a time lag between DDESB's adoption of new standards and EPA's revision of the RCRA regulations. When DDESB came out with new standards, facilities would be required to meet them, and the standards would be enforceable through DDESB's regular compliance mechanisms. But (until EPA changed its standards), facilities would also remain subject to the older standards incorporated into the RCRA regulations. The state authorization process under RCRA would complicate the process even more, since it would lead to further delay in regulatory adoption of new DDESB standards. As a result, under this option, EPA would refer to the most recent DDESB standards. Given DOD and the Services' long record of safety in the storage of military munitions and the DDESB's independent status within the Department of Defense, EPA believes that this approach would be both enforceable and fully protective of human health and the environment.

As mentioned above, EPA recognizes that certain RCRA requirements (e.g., those related to closure) are not in the DDESB standards. Therefore, EPA solicits comments on what specific requirements should be added to supplement the existing DDESB standards under any of the four alternatives and whether these should be added to the RCRA or the DDESB standards.

All three of the alternative options discussed above rely on the DDESB standards. Military facilities would be assured that their basic obligation, in storing waste munitions, would be to comply with DDESB standards. If they were doing so, then under the first alternative, they would be excluded from RCRA coverage entirely; under the second alternative, the stored ''waste'' munitions would be RCRA solid waste, but would not be regulated as hazardous waste (e.g., permits would not be required); under the third option, ''waste'' munitions would be RCRA hazardous waste, but compliance with DDESB standards would constitute compliance with RCRA technical standards.

The first alternative differs from the other two options in one important respect: under this alternative, EPA and authorized States would have no enforcement or regulatory role in the storage of waste munitions. Under the other alternatives, EPA and the States would have an oversight role, and regulatory agencies could enforce against facilities storing waste munitions out of compliance with DDESB standards. At the same time, however, the second alternative would provide significantly more relief to DOD and the Services than the third, and in many respects is similar to the ''deferral'' alternative. In particular, the approach (like the ''deferral'' approach) would eliminate permit requirements for storage of waste munitions (e.g., the procedures of Part 270, including public notice would not apply to storage of waste munitions, because waste munitions stored in compliance with DDESB standards would not be considered ''hazardous waste''); facilities generating waste munitions would not have to comply with generator standards (e.g., filing biennial reports); the land disposal prohibitions against extended storage would not apply; and permitted facilities receiving munitions for disposal would not be prevented from receiving that material, even if they had ''off-site'' prohibitions in their permits—since the material would only become a hazardous waste when it arrived at the treatment or disposal unit.

EPA solicits comments on all three of these alternatives, as well as the subpart EE approach in today's rule.

E. Emergency Responses

Today's proposal clarifies that RCRA generator, transporter, and permit requirements do not apply to immediate responses to threats involving military munitions or other explosives. EPA is proposing this language to address concerns of DOD and other emergency response officials that RCRA requirements may impede emergency responses, especially by causing delays or confusion.

The current RCRA rules exempt emergency responses from full permit requirements in two ways: (1) permits are not required for *immediate* responses to a discharge of hazardous waste or an imminent and substantial threat of a discharge (§§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3)); and (2) in cases of imminent and substantial endangerment to human health or the environment, a temporary emergency permit may be issued to a facility to treat, store, or dispose of hazardous waste—this permit may be issued orally, if followed by a written emergency permit within 5 days, and may not exceed 90 days in duration (§ 270.61). (In clarification, EPA emphasizes that the exemption from permit requirements in the case of *immediate* responses is an exemption from the requirement for an emergency permit under § 270.61, as well as from full RCRA permitting. Thus, an immediate response, under Federal regulations,

would require neither a full RCRA permit nor an emergency permit.)

EPA has received a number of inquiries, from both military and non-military sources, seeking clarification of how these provisions apply to emergency situations involving explosives. In response, EPA has stated that it considers *immediate* responses to situations involving explosives to be exempt from RCRA permitting (including emergency permitting), and substantive requirements (e.g., the risk assessment requirements for OB/OD treatment) under the exemptions listed in §§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). In EPA's view, time-critical responses to explosives emergencies constitute immediate responses to a discharge, or imminent and substantial threat of a discharge, of hazardous waste. On the other hand, if an immediate response is not necessary to address the threat, and the response can be deferred, the responding personnel should seek a RCRA emergency permit under § 270.61.

The intent of today's proposal is to codify, with some clarifications, the existing EPA policy. Proposed §§ 264.1(g)(8)(i)(D), 265.1(c)(11)(i)(D), and 270.1(c)(3)(i)(D) make it clear that explosive and chemical munition emergencies can be addressed without a RCRA permit (including an emergency permit). The proposal also clarifies, in §§ 262.10(h) and 263.10(c), that, if an emergency response expert at the site determines it to be appropriate, the explosive material may be removed and transported for safe treatment without a RCRA manifest, and the transporter is not required to have a RCRA identification number. Such transport could be to an open space or an EOD range. This proposal, which EPA believes is necessary to allow prompt response to explosives emergencies, is consistent with current EPA policy.

Today's proposal includes three new definitions in § 260.10 to help clarify the scope of this exemption. The definition of ''explosives and munitions emergency'' describes in detail what would constitute an emergency, and clarifies that an emergency situation includes suspect or unknown situations with significant uncertainties, including improvised explosive devices (IEDs, e.g., home-made bombs). The definition also states that the ''emergency response expert'' is responsible for determining whether an emergency exists.

An ''explosives and munitions emergency response expert'' is defined to include all military and non-military personnel trained in the identification, handling, treatment, transport, and destruction of explosives or conventional or chemical military munitions. Military emergency response experts include DOD Explosives Ordnance Disposal (EOD) personnel, who are trained in responding to emergency situations involving military munitions and explosives, and DOD Technical Escort Unit (TEU) personnel, who are trained to respond to emergency situations involving chemical munitions. EOD and TEU personnel respond to on-installation and off-installation incidents involving military munitions. They also respond to requests by other Federal agencies or local civil authorities for assistance with incidents involving non-military explosives. Non-military emergency response experts include the Bureau of Alcohol, Tobacco, and Firearms (BATF), Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Drug Enforcement Administration (DEA), US Postal Service, Federal Aviation Administration (FAA), other Department of Transportation (DOT), Department of Interior Bureau of Mines, State and local enforcement and emergency response personnel, and private sector explosives experts or specialists.

Finally, an ''explosives and munitions emergency response'' is defined as all immediate response activities identified and carried out by the emergency response expert to eliminate the threat, including all handling, render-safe (e.g., methods to defuse or separate initiator from the explosive), transportation, treatment, and destruction activities. These emergency actions might involve defusing, detonation, or other treatment of ordnance in-place, or transportation to a safer location, including to an EOD range, to defuse, detonate, or otherwise to abate the immediate threat.

DOD has raised three concerns regarding the regulation of emergency responses involving munitions or explosives under RCRA: (1) the effect of the RCRA land disposal restrictions on response actions, (2) possible RCRA corrective action liabilities, and (3) the possibility that treatment permits would be required for areas ''routinely'' used to handle emergencies. To the extent that any of these issues would delay or complicate responses to emergencies involving explosive material, EPA shares DOD's concerns. EPA's objective in proposing today's rule, and in clarifying the applicability of RCRA to emergency responses, is to remove regulatory impediments to emergency responses and to promote the safe and prompt management of explosives emergencies. EPA agrees with DOD that any regulatory impediments to prompt responses should be removed. DOD's three concerns are specifically discussed below.

Concerning the first issue—the application of the RCRA land disposal restrictions to explosives emergencies—EPA continues to regard open burning/open detonation as not constituting land disposal. Therefore, the land disposal restrictions do not apply. See 51 FR 40580 (November 7, 1986) and 52 FR 21011 (June 4, 1987). With regard to emergency responses to explosives involving deactivation methods other than open burn/open detonation, EPA notes that the treatment standard for reactive wastes is deactivation (i.e., removal of the hazardous waste characteristic of reactivity); see 40 CFR 268.42, Table 2. These standards are consistent with typical responses of an EOD team to an explosives emergency, and therefore the RCRA treatment requirements would not present a problem.

The responding agencies primary concern on the second issue—the applicability of RCRA corrective action requirements—is the possibility that they might incur liability for site remediation or investigation when they conducted an emergency response. In response to this concern, EPA emphasizes that RCRA corrective action requirements would not fall on the responding agency and that today's proposal would not in any way change or increase the responding agency's liability.

In the first place, the standard RCRA corrective action authorities in sections 3004(u), 3004(v), and 3008(h) would not be at issue, because they apply only to RCRA permitted or interim status facilities. Thus, these requirements would apply only if the emergency response took place at a RCRA treatment, storage, or disposal facility, and in this case any responsibilities for corrective action would fall on the facility owner, rather than on the responding authority. Furthermore, RCRA corrective action requirements do not apply to actions taken under the immediate response provisions of 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). Finally, in the case of a response conducted under a RCRA emergency permit (40 CFR 270.61(b), RCRA corrective action requirements would be excluded under 40 CFR 270.61(b)(6). This provision requires that emergency permits exclude conditions that would be inconsistent with the emergency situation that the permit was addressing. (EPA discussed this point in its RCRA corrective action proposal of July 27, 1990, 55 FR 30806.) Finally, if a response action is taken under CERCLA authority, CERCLA

section 107(d)(1) provides that no person ''shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan (NCP) or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or threat thereof.''

DOD's concern on the third issue is that, if the responding agency transported an explosive device to an off-site treatment area, that area might become subject to RCRA permitting requirements. In emergency situations, DOD EOD teams and other responding agencies often find it safer to move explosive material away from the site where it was found—where it may threaten people or property—and transport it to an EOD range. In such cases, the fact that the material can be transported to another location does not necessarily mean that the dangerous situation is under control or the emergency is over. Rather, it indicates a need to find an area where site access is controlled and the site conditions are known (e.g., the distance to nearby structures is adequate and there are no subsurface utilities), so that the material can be disarmed, defused, deactivated, or destroyed with confidence that an explosion will not cause injury or collateral damage. In previous guidance, EPA has consistently stated that off-site treatment of explosives derived from emergency responses does not trigger permit requirements, as long as it is legitimately part of the emergency response.

Because of this need for safe treatment sites, some EOD ranges may be regularly used to destroy explosives managed during emergency responses. The issue has been raised (and previous EPA guidance suggests) that some level of ''routine'' use of a particular range should trigger RCRA permit requirements. In EPA's view, however, the question of whether a permit is necessary hinges on the nature of each individual response (i.e., whether or not it involves an emergency), rather than on the number of times a given area is used for emergency responses. As long as the response to each individual incident was an emergency response, a RCRA permit would not be required.

F. Definition of ''On-Site''

Today's proposal would modify the definition of ''on-site'' in 40 CFR § 260.10 by adding contiguous property under the control of one person that is divided by a public or private right-of-way, even if access is by travelling along (as opposed to across) the right-of-way to gain entry.[11] The definition of on-site determines whether waste must be accompanied by a manifest during transportation and whether part 263 transporter requirements apply. (See, e.g., 40 CFR 262.20(a) and 263.10(b).

Many facilities generating hazardous wastes (including most military installations) are found on large properties split by public roads. Under current regulations, a generator or TSDF who produced or managed waste at one location and moved the waste across the road for temporary storage would be moving the waste ''off-site,'' if the waste were transported along rather than directly across the road. The waste transported along the route currently requires a RCRA manifest. This requirement does not currently apply, however, if the wastes are transported directly across the road.

Today's proposal would expand the definition of ''on-site'' to allow transportation without a manifest between contiguous properties controlled by the same person regardless of how access is gained from one parcel to another when such contiguous property is cut by a public or private right-of-way. All other aspects of the definition would remain the same.

The question of how ''on-site'' is defined arose in the context of military munitions because many military installations are crossed by public roads. Today's proposal, however, would apply to hazardous waste generators and TSDFs in general, because the same situation exists for non-military entities. For example, a number of universities, with laboratories and other sources of small amounts of hazardous waste dispersed throughout campuses, have found that the manifesting and transportation requirements make it difficult to consolidate wastes at a single location for off-site shipment under the current requirements. Similarly, large industrial facilities may face the same administrative or logistical difficulties.

Whether waste no longer subject to the manifest would continue to be subject to Department of Transportation (DOT) requirements will depend on whether that material is regulated under any other DOT hazard class. The Hazardous Materials Regulations (HMR, 49 CFR parts 171 through 180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR part 262 (49 CFR 171.8). If a material is not subject to EPA's manifest requirements, it is not considered a ''hazardous waste'' by DOT. However, such material may still be regulated as a hazardous material and subject to the HMR if it meets the defining criteria for one or more of the DOT hazard classes. Therefore, for these shipments, generators and/or TSDFs must decide if the waste falls under any of the other DOT hazard classes in order to determine if compliance with the DOT requirements under CFR parts 171 through 180 is required.

EPA believes that change in the definition of ''on-site'' will result on balance in an increase in protection of human health and the environment. EPA believes that the current definition of on-site may be discouraging consolidation within a generator's or TSDF's site, resulting in less control of the waste by the generator or TSDF. Removing barriers to consolidation of waste in one main area, rather than several small areas, will reduce the possibility that the public and the environment will come into contact with hazardous waste.

EPA also believes that facilitating more central consolidation will allow generators and TSDFs to place such consolidation sites in more remotely located areas than they would if confined to the boundaries within rights-of-way, thereby increasing the safety of the public should an accident occur. The new definition gives generators and TSDFs such as military bases and universities more flexibility to determine where consolidation areas are situated. In addition, EPA believes this change in definition will have the added benefit of facilitating the building of safer accumulation areas because generators and TSDFs may be more likely to exceed regulatory requirements for consolidation areas if they are responsible for fewer consolidation sites overall. EPA expects the benefit of consolidation on balance outweighs the risk of allowing transportation without a manifest along a short stretch of road to which the public has access. EPA requests comments on these views of the net benefits regarding human health and the environment.

In modifying the definition of on-site, EPA intends not to affect requirements

[11] The current regulatory definition is: ''On-site 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.''

other than the requirement that a manifest accompany hazardous waste shipments and whether part 263 transportation requirements apply. EPA requests comments on whether other requirements of the RCRA program are affected by this change.

Even though hazardous waste traversing contiguous property may be ''on-site'' for RCRA purposes, discharges on public rights-of-way could expose the public to a health risk. DOT and CERCLA reporting requirements would apply to such releases, but those authorities do not necessarily require actual clean-up of the release. EPA seeks comment on whether DOT and CERCLA authorities are sufficient to provide adequate protection to public health in the event of a spill or release on a public right-of-way considered on-site or if 40 CFR 263.30 and 263.31 should continue to apply to any discharge of hazardous waste during transportation of hazardous waste on a public right-of-way regardless of whether it is on or off site. One way to implement that result could be to limit the on-site exemption from transporter requirements in § 263.10(b) so that §§ 263.30 and 263.31 would continue to apply to any discharge of hazardous waste on a public right-of-way even if it is considered ''on-site.''

G. Permit Modifications to Receive Off-site Waste Munitions

Some RCRA permits at military installations have conditions prohibiting the receipt of ''off-site'' waste. Under these permit restrictions, if the point of generation of a waste munition is any place other than the permitted installation, then the waste munition could not be accepted at the facility for treatment, storage, or disposal without a permit modification. DOD maintains that this situation will cause a serious disruption of its munitions management program.

EPA shares DOD's concern that today's proposal might disrupt DOD's ongoing munitions management program, and in response is proposing in today's rule a means to minimize this impact. Under this proposal, permitted facilities with prohibitions would be allowed to continue receiving waste munitions from off-site sources, upon notification to EPA, until a final permit modification is approved. In the case of interim status, facilities would be allowed to continue receiving off-site wastes, although it might be necessary for the facility to amend its permit application.

There are three specific requirements that would attach to this provision and be codified at 40 CFR 270.42(h). First, to be covered under this provision the permitted facility must be in existence on the date these rules go into effect. Second, for permitted facilities, the facility must submit a request for a Class 1 permit modification following the procedures of 40 CFR 270.42(a), on or before the effective date. Third, a permitted facility must develop and submit a Class 2 permit modification within 180 days of the effective date. If extenuating circumstances will not allow submission of a Class 2 modification within 180 days, the facility may, within the 180 days, request the permitting agency to allow an extension for a specified period. The permitting agency shall respond to any request for an extension within 30 days. If no action is taken by the permitting agency within 30 days, the facility is considered to have been granted the extension. The permitting agency's action may be to extend the 30 day response time.

Today's proposal would not affect activities at interim status facilities. In some cases, however, the facility's part B permit application might include an off-site waste prohibition. In this case, the facility owner should amend the permit application.

These proposed requirements are similar to the provisions for newly listed wastes in 40 CFR 270.42(g), which are designed to prevent the disruption of ongoing waste management activities, while bringing them promptly under regulatory control. EPA anticipates that the provisions in proposed 40 CFR 270.42(h) will similarly prevent disruption in the handling of waste munitions.

Despite this proposed approach, DOD remains concerned about any option that might restrict the movement of munitions undergoing demilitarization or add, in its view, unnecessary paperwork costs and redundant reviews. As DOD has pointed out, operations at the receiving facility would remain the same after permit modifications, and conditions affecting human health and environmental protection would generally not change. For example, the provisions of the facility's permit addressing the types of waste, the quantities that might be treated at any given time, and permissible releases from the treatment process would likely remain the same. In which case, the permit modification would be a paperwork exercise, adding to costs but not adding to environmental protection. DOD's preferred option, discussed in Section V.A.1 of this preamble, would be to set the point of generation of the waste at the point when it arrives at the receiving unit. In this case, the waste would have been generated on-site, and its management would not constitute a permit violation.

EPA understands DOD's arguments, but is concerned about the expectations of the public in the vicinity of permitted installations and the perception that permit conditions are being circumvented. The permit was issued through a site-specific public process, and, on its face, it appears to prohibit acceptance of just the sort of material that would be allowed under DOD's recommended approach. Arguably, the most consistent way to address this issue would be through a site-specific permit modification, rather than a national rulemaking. EPA questions whether it would be appropriate to promulgate a regulation that would in effect remove off-site prohibitions from particular permits—at least as they applied to waste munitions—without site-specific notice and an opportunity for comment.

DOD has particularly cited the costs of permit modifications, which, it has argued, will cost in excess of $50,000 apiece. EPA questions whether a permit modification would be as costly as DOD estimates, especially since the modification would presumably only amend the permit's prohibition against off-site waste, and the permit's technical or procedural conditions would generally not be changed. EPA does agree, however, that permit modifications to allow ''off-site'' waste munitions will increase the compliance burden on DOD and the procedural burden on State regulators. In the economic analysis supporting this proposal, EPA has estimated that the permit modifications will cost $30,000 each (DOD's original estimate) and that 24 permits would have to be modified (DOD's estimate). Much of the costs, in EPA's view, would result from the need for public outreach rather than technical work associated with the permit modification.

However, in light of DOD's concerns, EPA requests comments on both the proposed approach and DOD's approach, and with specific recommendations on alternative means to address concerns regarding public involvement in the process.

V. Discussion of Major Alternatives

In addition to the approach proposed in today's notice, EPA considered several alternatives to addressing major issues. These alternatives are discussed below.

A. Stockpiled Munitions

1. Approach Based on Army Regulation 200–1

DOD and the individual Services have historically taken the position that munitions in the military stockpile only become waste when they are received at a treatment or disposal unit. This approach has been incorporated into Army regulations in AR 200–1 and, until recently, guided military practice. DOD believes its traditional approach addresses two key points: (1) That military munitions are fundamentally different from most other types of industrial hazardous waste due to their unique physical and chemical characteristics, and (2) that the management of military munitions is different from the situation RCRA was enacted to address in that there are extensive management, oversight, and accountability controls already in place.

The primary difference between DOD's and EPA's approach is in the definition of the waste's point of generation. Under the approach proposed today, the point of waste generation is generally when the waste is removed from storage for treatment or disposal; after that point, the munition is regulated as hazardous waste. Under the approach in AR 200–1, the point of generation is moved to receipt of the munition at the waste treatment or disposal unit. Before that point, the material would not be considered RCRA solid or hazardous waste.

DOD is concerned about EPA's proposed approach in part because of the costs and paperwork associated with transporting hazardous waste. More important, however, DOD is concerned that many RCRA permits at military installations prohibit the receipt of ''off-site'' waste. DOD's AR 200–1 approach would solve both of these concerns.

As discussed previously, EPA addresses these concerns in today's proposal by exempting DOD-controlled shipments between DOD installations from the RCRA manifest requirements, and by providing Class 1 followed by Class 2 permit modifications to allow for off-site wastes. Nevertheless, EPA solicits comments on both approaches.

2. DOD Interim Guidance

A second alternative would be for EPA to codify the approach outlined by the military Services in interim guidance issued in November 1993. Under this Services-wide interim approach, munitions removed from the active inventory undergo review to determine whether they can be returned to service or used for other purposes. When the possibility of beneficial uses has been eliminated, the material would be transferred to a hazardous waste account (e.g., the ''BHW'' account) and orders to destroy the munition transmitted to the installations that held it. The munition would become a hazardous waste at the point the order was received by its custodian. The custodian, then, would become the generator of the ''waste''; generator standards would apply at the storage magazine; and RCRA land disposal restrictions would require prompt treatment and disposal.

EPA has chosen not to propose this approach because, in EPA's view, it would not provide any significant increase in environmental protection. EPA also shares DOD's concerns that the approach might significantly complicate the military's safe management of the military stockpile.

In particular, DOD has expressed two major concerns with this approach. First, if stockpiled munitions in a magazine were declared hazardous waste, that magazine would become subject to RCRA generator requirements, including RCRA tank, container, or containment-building standards; these standards, in turn, might require retrofitting of the units, even though they were designed according to military standards to protect against explosive hazards. Second, if the munitions were not removed from the magazine and shipped off installation within 90 days, the installation would become subject to RCRA permit requirements. Thus, the installation would be faced with the choice of readjusting its standard operating procedures for munitions to ensure that items in the BHW account were shipped off-site promptly, or seek a RCRA permit—a 2 to 3 year process involving considerable time and paperwork. Neither result, in DOD's view, would lead to increased safety or environmental protection, and risk might actually increase because munitions would be moved more frequently.

3. Munitions Scheduled for Destruction by International Treaty

Several interested parties have also suggested that when a munition has been slated for destruction by act of Congress or treaty, there is clear evidence of an intent to discard, and therefore the munition should be considered solid waste. For example, Congress has instructed the Department of Defense to destroy the chemical weapons stockpile by December 31, 2004 (National Defense Authorization Act for Fiscal Year (FY) 93), and, once the United States ratifies the Chemicals Weapons Convention and the Convention goes into force, the U.S. will be bound by international treaty to destroy the weapons within ten years. It has been argued that the act of Congress and U.S. ratification of the Convention (when that occurs) would constitute a decision to discard the munitions. Therefore, the munitions should be handled as hazardous waste.

EPA has not taken this position to date in interpreting its solid waste regulations, and it is not proposing to do so in today's rule. Disarmament conventions and Congressional directives to demilitarize a weapons system should not, as a general matter, be interpreted as a decision to discard a munition. For example, the Chemical Weapons Conventions (like most such conventions) establishes a staged schedule, to allow mutual assurances that all signatories are fulfilling the agreement. Thus, the stockpiled munitions serve a deterrent purpose. Furthermore, the phased schedule laid out by the treaty would put the Army in violation of the RCRA land disposal restrictions, which would prohibit storage of ''waste'' munitions beyond one year (with limited extensions). Indeed, despite the convention, the stored munitions (with the exception of M55 rockets) remain part of the active military stockpile. While these ''products'' may be slated for phase-out in the future, they are still available (at least in theory) for use in the interim.

Furthermore, EPA questions whether RCRA regulation would substantially add to the safe management of military munitions slated for destruction. Considerable attention, to be sure, has focused on the stability and safety of the chemical weapons stockpile. EPA notes, however, that the munition on which most of the discussion has centered—the M55 rocket—is already regulated as hazardous waste. Therefore, the main concern with the stored chemical weapons is already being addressed as a regulatory matter. In addition, under proposed § 261.2(g)(1)(iii), leaking munitions would be regulated under subtitle C. Therefore, leaking chemical munitions would require regulation. Finally, the general safety of stockpiled chemical munitions is already the subject of considerable internal and external review. EPA, as a result, tentatively concludes that additional oversight under RCRA would not significantly increase protection of human health and the environment, while increasing the paperwork burden on the services and the workload burden of the regulatory agencies.

4. Alternatives Based on Condition of Munition

EPA also considered definitional approaches based on the characteristics of the munition. It has been suggested, for example, that munitions should become hazardous waste when they can no longer be used for their intended purposes. This determination might be based on an analysis of the munition itself, or on a weapon's predicted service life. Similarly, ''waste'' munitions might include off-specification munitions and munitions rendered obsolete because the armaments for which they were made no longer exist. EPA, however, has tentatively rejected this approach (except in the case of leaking or deteriorated munitions).

First, this approach would be inconsistent with EPA's approach to other ''products.'' Commercial products do not automatically become solid waste when they can no longer be used for their intended purposes, and off-specification commercial products are not considered solid waste. These materials remain products; they may be put to other uses, or reprocessed for their original use, or simply stored for possible future uses without being brought under RCRA jurisdiction. The event that triggers RCRA jurisdiction is an intent to discard the material.

Second, EPA believes that this approach would be extremely difficult for regulators to implement or enforce. The determination that a munition can or cannot be used for its intended purpose, for example, will often be highly technical and require detailed expertise in weaponry. EPA and State regulators typically will not have this expertise, and it will often be hard to rebut an assertion by military personnel that a munition can indeed be used. Service life is also likely to be an unreliable guide, because weapons do not necessarily lose their usefulness at the completion of service life, and reprocessing is often a possibility. Above all, EPA is concerned that this approach would not provide the clarity of regulations that Congress sought in passing the FFCA. Instead, the approach might lead to protracted disagreements between the regulators and the regulated over whether a particular munition is still usable as a munition, with no clear environmental issue at stake.

5. Regulation of the Demilitarization Process

One of the primary benefits of RCRA regulation, according to critics of DOD, is that prompt treatment of waste would be required under the RCRA land disposal restrictions or LDRs. These restrictions require that hazardous waste be treated before it is disposed of in a land disposal unit. Furthermore, the statute prohibits facilities from storing waste before treatment, except as necessary to accumulate sufficient quantities for proper treatment and disposal (RCRA § 3004(j)). (Under EPA's enforcement policy, if storage is for longer than a year, the person holding the waste must be able to demonstrate that the storage is necessary to accumulate sufficient quantities.) Thus, if ''obsolete,'' ''unserviceable,'' or ''unusable'' munitions were defined as hazardous wastes, their prompt destruction would be required.

One commenter representing members of the commercial waste treatment industry—Strategic Environmental Analysis, Inc.—expressed strong support for applying RCRA oversight at the point when a munition became unserviceable. The commenter was particularly concerned that, if RCRA did not apply at this point, DOD could play ''shell games'' and store waste munitions indefinitely. At the same time, the commenter acknowledged the military's need for flexibility in evaluating and managing obsolete munitions. To address these concerns, it recommended a regulatory approach that would, in effect, bring the military demilitarization process under RCRA regulatory control and set specific schedules for the recycling or destruction of obsolete munitions.

Under the recommended approach, EPA would define off-specification, obsolete, or unusable munitions as hazardous waste. This waste would be subject to technical management standards, but not yet covered by permit requirements or the land disposal restrictions. Hazardous waste munitions could be stored one to five years before they became subject to the land disposal restrictions. During this time, the holder of the munition or the appropriate service would investigate possible reclamation. If reclamation was determined to be feasible, it would be required within one to two years. (Reclamation would take place under specially designed RCRA standards.) If reclamation were not feasible, the munition would have to be treated according to land disposal standards within the regulatorily permitted time frames (i.e., one to two years), and the facility storing the munition would require a RCRA permit.

This approach, EPA notes, establishes a radically new definition of ''solid waste'' under RCRA, and applies RCRA standards to the reclamation of unused products—a considerable extension of the current regulatory scope of RCRA. In effect, the approach applies RCRA requirements to munitions within the demilitarization account and sets a limit on the time period a munition can remain within that account before reclamation or destruction.

EPA has not proposed this approach for several reasons. First—leaving aside the question of whether this approach is consistent with the statutory scope of RCRA—EPA does not believe it is appropriate in this rulemaking to develop a broadly expanded regulatory definition of solid waste. EPA also notes that commenters did not provide evidence of human health or environmental damage resulting from non-RCRA storage of ''obsolete'' munitions, nor did it provide details on military ''shell games'' delaying proper treatment and disposal. While these problems may to a certain extent exist, EPA would require considerably more evidence before it imposed such a far-reaching regulatory scheme, going well beyond requirements that apply to commercial products.

In addition, although EPA has not developed specific cost estimates for the recommended approach, it clearly could impose substantial burdens not only on DOD but also on regulators as well. Presumably, DOD would be subject to significant recordkeeping and reporting burdens necessary to identify obsolete munitions and document the demilitarization process. Reclamation of unserviceable munitions would for the first time come under regulation. EPA and the States would assume new obligations in inspecting perhaps thousands of storage units and ensuring that regulatory storage times were not exceeded. Fulfilling these obligations would likely divert limited resources from more pressing and demonstrable environmental problems. Especially given that the substantive requirements on stored munitions would not change, EPA questions whether this diversion of resources is justified.

B. Range Management

1. Active Ranges

EPA has consistently taken the position that the use of products for their intended purpose does not constitute waste management and is not reached by RCRA. Thus, today's proposal excludes military munitions training and testing activities at firing ranges from RCRA regulation on these grounds.

One group of interested parties has argued for an alternative approach at active ranges. According to this group, discharged munitions at military firing

ranges clearly meet the definition of solid waste under RCRA; while their firing may or may not constitute ''disposal'' of a product, they become waste ''as soon as they hit the ground''—at this point they become discarded material that has served its useful purpose, that is no longer needed by the military, and that will never be retrieved for any useful purpose. These commenters argued that EPA should use its RCRA authority to tailor special regulations for military firing ranges. For example, DOD and the relevant services might be required to track all fired munitions, retrieve and properly dispose of fired munitions at reasonable intervals, and (where the munition is irretrievable) manage the munitions in place in a way that guarantees that off-site migration of contaminants does not occur.

In support of the need for RCRA regulation, these commenters have pointed to examples of environmental damage or potential threats associated with firing ranges. These include deaths resulting from detonation of unexploded ordnance at old ranges transferred to non-military ownership; numerous other cases of unexploded munitions or discarded chemical munitions found on non-military lands; threats to endangered species and other ecosystem damage from range activities; death of thousands of waterfowl resulting from consumption of residual white phosphorus at an artillery impact range; destruction of lands that are culturally or religiously significant to Native Americans; possible adverse health effects related to air emissions from military training exercises; soil and groundwater at ranges contaminated with heavy metals and possibly organic toxics; and high heavy metal concentrations in streambeds and fish tissue in the area of firing ranges.

In developing this rulemaking, EPA has not independently reviewed each of these examples in detail, and it recognizes that in many cases the extent of damage has been the subject of considerable disagreement. Furthermore, it is often unclear whether an acknowledged problem was caused by weapons testing or training at ranges, or by other activities (e.g., open burning/open detonation of munitions, other waste management activities, or weapons manufacture and processing). At the same time, however, military ranges have clearly been associated with numerous environmental or safety concerns.

Although it recognizes these concerns, EPA is not proposing in today's rule to regulate military firing range activities under RCRA. EPA is taking this approach for several reasons. Above all, EPA questions whether RCRA regulatory authority appropriately extends to activities like weapons testing or training exercises, which involve the use of a product and which are not ''waste management'' as it has historically been understood. Further, EPA questions whether the RCRA regulatory apparatus is well adapted to the regulation of weapons testing or training, especially given RCRA's reliance on site-by-site permitting and the existence of statutory constructs such as the land disposal restrictions and minimum technology requirements, which make no sense in the context of range management.

DOD critics recognize the difficulties of applying conventional RCRA requirements (e.g., full RCRA permits) to every military firing range, and instead suggest a ''permit-by-rule'' approach. EPA has already issued permits-by-rule for certain activities involving hazardous waste; however, this approach has been adopted only in cases where detailed EPA regulations already exist under other statutory authorities implemented by EPA. The regulatory and legal difficulties of implementing such an approach at ranges are considerable. More particularly, EPA questions the need for, or (in some cases) the advisability, of the specific regulations suggested by DOD critics. A requirement that all fired munitions be tracked would be impracticable. It would also be largely redundant with existing DOD requirements. (DOD Directive 6055.9–STD, Chapter 12, requires that installations maintain permanent records of ''known and suspected'' ranges, including ''contamination by nomenclature, hazard, quantity, exact locations, and dud rates.'') Similarly, a requirement that ranges be regularly cleared for unexploded ordnance may be practical in some circumstances, but in others involve a significant safety threat to military personnel. According to DOD, the Air Force is able to require routine clearance of bombing ranges, where relatively limited numbers of unexploded munitions will be found. The Army, however, does not apply similar requirements to artillery ranges, given the much larger number of unexploded rounds.

DOD and the Services already have regulations governing range activities. For example, the DDESB has issued regulations requiring recordkeeping, remediation, use restrictions, and similar requirements. EPA believes that the most appropriate approach to regulating day-to-day range activities is through these standards, rather than under RCRA—given the poor fit of the statute. EPA recognizes that RCRA would provide for independent oversight and enforcement, an important factor for DOD critics. It questions, however, whether the costs of this oversight (both to DOD and the regulatory agencies) would be justified. This is particularly the case since many of the concerns addressed by commenters are already addressed under other independent authorities (e.g., DOD and the services must comply with the Endangered Species Act; CERCLA governs transfer of ranges (and other military property) to non-Federal ownership; and RCRA and CERCLA remedial authorities are available for conventional contamination resulting from range activities), or under any circumstances would fall outside the scope of RCRA (e.g., radioactive materials).

2. Applicability of Range Cleanup Authorities

Proposed § 261.2(g)(4)(i) states that munitions left in place are considered solid waste for statutory purposes when a range is closed, or when the property is transferred from military control. In practice, this requirement would make the munitions potentially subject to section 7003 of RCRA in the case of an imminent and substantial endangerment, and to sections 3004(u) and 3008(h) cleanup authorities if the facility was otherwise subject to RCRA permitting requirements. As discussed earlier in this preamble, the proposal also contains a sunset provision; munitions left in place at closed or transferred ranges would no longer be subject to RCRA cleanup authorities once DOD promulgates, pursuant to DOD's own statutory authorities, regulations governing cleanup of ranges.

Some critics of DOD are likely to argue that today's proposal does not go far enough. Section 7003 is a discretionary authority for EPA, and sections 3004(u) and 3008(h) only apply at RCRA treatment, storage, and disposal facilities where releases have been identified. Thus, according to some commenters, these authorities may not adequately address closing ranges. It has been suggested that EPA impose ''post-closure'' requirements on all closed military ranges where munitions or other contaminants are left in place. These requirements might or might not be imposed through a permit, and they might include permanent access restrictions, monitoring for off-site releases, and other requirements.

EPA notes that current statutory restrictions on Federal property transfers cover many of the problems

that a post-closure requirement would also address. For example, under section 120(h)(3) of CERCLA, deeds conveying contaminated real property from the United States to non-Federal ownership must contain a covenant that all remedial action necessary to protect human health and the environment has been taken with respect to any hazardous substances remaining at the property. All remedial actions necessary to protect human health and the environment have been taken when EPA determines that an approved remedy is constructed and operating properly and successfully. Therefore, current statutory provisions already provide considerable legal protection when a former range is transferred to non-Federal owners. The applicability of these safeguards is less clear, however, when a closed range on an installation is put to other uses, or a range is transferred from the Department of Defense to another Federal agency. EPA solicits comments on the need for ''post-closure'' controls under RCRA to address these situations where property remains under Federal ownership. Comments should address the legal basis for such controls under RCRA; their need, given current controls (including current DOD regulations and practices); the level of controls that would be appropriate; and the regulatory burden of such controls, both on DOD and the regulatory agencies.

C. Alternative Organization (Separate CFR Part)

EPA also sees the benefit of a uniform nationwide system for managing waste military munitions given DOD's national defense mission, nationwide presence, and logistical and operational needs. A consistent set of standards for waste military munitions will simplify integration of these rules with the DDESB and the Service requirements for the management of all military munitions (including waste munitions). Indeed, EPA believes Congress' intent in passing RCRA § 3004(y) was to establish a clearer, uniform national system for regulating military munitions. To support such clarity and consistency, DOD has recommended that the regulations for military munitions be included in a separate part of the CFR, which would identify the requirements that apply to military munitions in one single place. The new part as proposed by DOD would still contain numerous cross-references to other pertinent parts and sections, and the military would still have to comply with other parts for their non-munitions hazardous waste.

EPA solicits comment on whether this approach would be simpler to implement, easier to enforce, or easier for States to adopt. For an example of how the alternative approach might be structured, commenters may refer to the DOD proposal, which may be obtained by contacting Mr. Ed Sims, U.S. Army Environmental Center, Environmental Compliance Division, Mail Code SFIM–AEC–ECA, Building E4435, Aberdeen Proving Ground, Maryland 21010–5401, through the DOD Home Page on the Internet at: EWSIMS@AEC1.APGEA.ARMY.MIL, or from the EPA docket for today's rule. DOD recommends that the standards be placed in 40 CFR part 269. However, EPA believes that, if this approach is adopted, it should be placed in a separate subpart in 40 CFR part 266, which addresses other special types of waste and waste management facilities.

VI. State Authority

Under section 3006 of RCRA, EPA may authorize States to administer and enforce the RCRA hazardous waste program. (See 40 CFR part 271.) After authorization, the authorized State administers the program in lieu of the Federal government, although EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA. New Federal requirements (such as today's rule) do not apply until they have been adopted by the State and the State's authorization has been revised to incorporate the requirements.[12]

Under RCRA regulations, States must adopt and become authorized for new requirements within one to two years of the rule's effective date, where the requirements are more stringent or broader than existing requirements. Section 3009 of RCRA allows States to impose standards that are more stringent than those in the Federal program.

Today's proposal, however, raises an issue regarding State authority because Congress clearly expected EPA to develop national standards for waste munitions through the RCRA rulemaking process. Although today's rule would lay out such national standards, States under the standard RCRA approach could enforce their own more stringent standards under their own State programs. This situation, at least in theory, could lead to just the sort of piecemeal approach that the FFCA was intended to avoid. Therefore, EPA is also considering, in addition to the standard RCRA approach to state authorization, an approach that would prohibit States from enforcing broader or more stringent requirements with respect to military munitions. This alternative approach would be specific to today's proposal and, because it would be tied to the waiver of sovereign immunity in RCRA, it would in any case be limited to rules where the only regulated entity was the Federal government. In today's notice, EPA solicits comment on whether this alternative approach should be adopted for military munitions, or whether the standard RCRA approach should be maintained.

As explained above, the standard RCRA approach would allow States to promulgate regulations that are broader in scope or more stringent than Federal requirements. And States would not be required to adopt new regulations that are less stringent or narrower than regulations they already have in place. The legal basis for this approach would derive from section 3009, which allows States to impose more stringent hazardous waste standards.

Under the standard approach, therefore, states would be required to adopt those portions of today's rule that are more stringent or broader in scope than current requirements, but they would not be required to adopt less stringent requirements. Many of the requirements in today's rule, in EPA's view, are neither more nor less stringent than current regulatory requirements applicable to other materials. Therefore, it is EPA's view that under current RCRA procedures, the adoption of these regulatory provisions by States would not be required, as long as the States interpret their current regulations in a manner that is no less stringent than today's proposal. Similarly, States would not be required to pick up those portions of today's proposal if they are promulgated in a final rule, that are less stringent than existing requirements. The less stringent portions of the rule are: (1) the modified definition of ''on-site'' (§ 260.10), (2) the exemption of emergency responses involving explosives from RCRA transport requirements (§ 262.10(h)), and (3) the RCRA manifest exemption for the off-site shipment of stockpiled munitions waste from one DOD installation to another.

Although states would not be required to adopt less stringent requirements under this approach, EPA strongly urges States to adopt all aspects of today's rule, when it is finalized, to ensure clear

[12] Under section 3006(g) of RCRA, enacted as part of the Hazardous and Solid Waste Amendments (HSWA) of 1984, new requirements imposed by HSWA take effect in authorized States at the same time as they do in unauthorized States—as long as the new requirements are more stringent than the previous requirements. EPA implements these new requirements until the State is authorized for them. Since today's proposal is not issued under HSWA authority, however, section 3006(g) does not come into play.

guidelines for handlers of waste military munitions, State regulators, and the public. EPA believes that, although States under the standard approach can be more stringent, Congress intended for the rule to establish a uniform and consistent program for the management of waste military munitions. Therefore, States should adopt these regulations as quickly as their legislative and regulatory processes will allow.

In two respects, today's proposed rule is more stringent than current requirements: (1) The requirement that military installations retrieve munitions fired off-range (§ 261.2(g)(4)(ii)), and (2) the requirement that military personnel responding to immediate threats involving military munitions maintain records of the response (§§ 264.1(g)(8)(iv), 265.1(c)(11)(iv), and 270.1(c)(3)(iii)). If these proposed requirements are promulgated in a final rule, authorized States must adopt these requirements as part of their State programs and apply to EPA for approval of their program revisions. Section 270.21(e)(2) sets out the deadline for State program modifications; § 271.21 identifies the procedures for revision of State programs.

The above approach is consistent with the basic principles of Federal-State relationships under RCRA. EPA is committed to a partnership role with the States and recognizes that States should be the primary implementers of the hazardous waste program. Furthermore, it has been axiomatic under RCRA that States run their program under their own State laws, and that, while EPA sets national minimum standards, States may choose to be more stringent. At the same time, EPA recognizes DOD's very real need for national consistency in managing waste munitions, given DOD's national defense mission, nation-wide presence, and logistical and operational needs. Therefore, as discussed above, EPA is considering an alternative approach, under this rule, that ensures national standards by precluding States from enforcing more stringent requirements on waste military munitions.

This approach would characterize EPA's requirements as more stringent than the current requirements because they are new standards with respect to the identification of when munitions become waste and as to the storage and transportation standards for that waste. Under this alternative these regulations, when final, would not apply in an authorized State until such time as a State has revised its authorized program to incorporate these requirements and such revisions have been approved by EPA in accordance with 40 CFR Part 271. Additionally, this approach would interpret the waiver of sovereign immunity in section 6001 of RCRA to prohibit broader or more stringent State requirements as applied to military munitions than those requirements adopted in a final rule under section 3004(y).

The approach would be supported by policy and legal arguments that the generally available authority of the States to promulgate more stringent rules than those issued by EPA under RCRA is not present in the case of rules regulating military munitions. It could be argued that Congress in the FFCA intended that EPA, in consultation with DOD, the States, and interested parties, develop national regulations that reflected the views of all and that settled both the jurisdictional and the technical issues at one time.

The argument that the scope of the waiver of sovereign immunity does not permit a State to impose more stringent requirements than those contained in Federal regulation depends on the language of RCRA 6001. This section provides that Federal agencies ''shall be subject to, and comply with, all Federal, State, interstate, and local requirements * * * respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to under such requirements.'' (42 U.S.C. 6961) EPA used similar language in section 118 of the Clean Air Act, in its General Conformity Rule (40 CFR Part 51) to preclude States from applying more stringent requirements on federally-assisted facilities. In the case of today's rule, it would be argued that, because military munitions are items unique to the military, more stringent state regulation would, by definition, apply only to the military and thus be discriminatory and outside the scope of the RCRA waiver of sovereign immunity in section 6001.

EPA will carefully consider both approaches and their policy and legal interpretations. Interested parties, including both DOD and the States, are asked to comment on the approaches and to address such issues as the potential for discrimination against the Federal government; the extent to which the military munitions rule would or could apply to non-Federal entities or to entities whose costs of compliance would not ultimately be borne by the Federal government; the policy considerations raised by the dangers of military munitions and the operational needs of the Military Services; and the practical implementation issues that both approaches would raise.

VII. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. 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 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.

EPA has determined that today's proposal is a significant rule under Executive Order 12866 due to the novel policy issues raised. EPA estimates that today's rule results in national annual incremental costs of $190,000 per year. This represents a savings over baseline costs of approximately $1,400,000 to over $2,500,000 per year. For more information on the costs impacts of today's proposal and of some alternative approaches, see the *Economic Impact Analysis of the Proposed Munitions Rule*, in EPA Docket #* * *

1. Cost Analysis

Today's rule focuses on several significant issues: (1) identification of munitions as waste; (2) transportation of munitions identified as wastes; (3) emergency response actions; (4) storage standards for waste munitions; and (5) maintenance and closure of military ranges. Some management approaches to some of these issues may result in significant costs to the U.S. Department of Defense. However, EPA has estimated that the proposed rule, which would relax requirements from the assumed full subtitle C regulations, would not result overall in additional financial burden to the Department of Defense or any military installation. In many instances, EPA has concluded that

current Department of Defense standards meet RCRA standards and imposition of RCRA standards would result in regulations that are redundant.

Over the next ten years, EPA estimates that the proposed regulation will result in annual costs of approximately $190,000 per year to the Department of Defense. The most significant costs would be related to the need for permit modifications for treatment and disposal facilities receiving off-site wastes. However, today's proposal results in avoided costs on the order of $1,400,000 to $2,500,000 per year over baseline. Baseline is based on DOD's current operations.

The principal sources of annual savings include avoided costs for new permits, contingency plans, manifests, and retrofitted storage units. These avoided costs may be more significant when compared with other regulatory alternatives considered by EPA. For example, analysis of costs for several alternatives suggests that incremental costs for full Subtitle C requirements and active range management may exceed $410,000,000 per year. Other alternatives may exceed $430,000,000 per year. The cost analysis for the proposed rule and alternatives is presented in the technical background document, *Economic Impact Analysis of the Proposed Munitions Rule.* These higher costs result primarily from the costs for active range management.

EPA did not develop specific costs for range closure and clean up (e.g., prior to property transfer) under RCRA 7003, 3004 (u) or (v), 3008(h), CERCLA, the Defense Environmental Restoration Program, or Base Realignment and Closure. Such costs are site-specific, and in general, the Agency assumed that these costs would be similar under each authority or program, and thus, there would be no incremental costs under today's proposal. EPA requests that commenters submit additional information relevant to the cost for clean-up of closed ranges under each of these authorities.

2. Benefits Analysis

EPA is proposing that stockpiled munitions generally do not become hazardous waste subject to regulation until they are removed from storage for transportation to a disposal unit. This proposal recognizes that current DOD storage regulations have been successful in protecting human health and the environment, and that additional requirements would be redundant. (See section IV.B.1.f of today's proposed rule). EPA also has proposed to exempt stockpiled waste military munitions from RCRA manifest and other requirements when transported because DOD standards provide comparable protection. The benefit of this proposed option is the annual cost savings of approximately $1,400,000 to over $2,500,000, due to avoided retrofits, permits, contingency plans, and manifest costs.

One exception to the above proposed definition is for munitions that are ''deteriorated or damaged (e.g. leaks, broken seals) to the point that they cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes.'' Such munitions would be designated as regulatory solid waste under the proposed regulation. The benefit of regulating deteriorated or damaged munitions as a solid waste under RCRA would be the assurance that such munitions would be stored and transported in a safe manner and destroyed as soon as safely feasible, thus limiting the potential exposure of humans or the environment to hazardous substances.

The use of munitions for their intended purpose (i.e. discharged at a firing range) is not considered ''waste management'' for the purposes of RCRA. However, under today's proposal, used or fired munitions left in the environment become ''discarded'' in a RCRA statutory sense, and therefore are subject to RCRA statutory authorities, including RCRA sections 7003, 3004 (u) and (v), and 3008(h).

The benefits of considering used or fired munitions as ''discarded'' at the point of property transfer or discharge off-installation range are especially clear in the case of unexploded ordnance (UXO). Military personnel are trained in handling explosive munitions, and military installations have security precautions to prevent civilian exposure to explosive devices. Once property containing UXO leaves military control, however, there is no assurance that the same measure of protection would be maintained, even if it is transferred to another Federal Agency.

The Department of Defense Explosives Safety Board Accident Database reports that since 1943, there have been a total of 30 non-operational accidents from military unexploded ordnance, resulting in seventy-seven injuries and twenty-six fatalities. In many cases, these accidents occurred after property transfer. As more and more bases undergo closure, the potential for accidents from abandoned unexploded ordnance will increase. By including used or fired munitions which leave military control in the statutory definition of ''solid waste,'' EPA and authorized States will be able to provide independent oversight of property transfers involving former ranges.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

EPA has determined that today's proposal will primarily affect Federal Agencies, such as the Department of Defense, and therefore few, if any, small entities will be affected. Furthermore, since today's proposal generally provides savings over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. However, the Department of Defense has raised the issue that these regulations may adversely impact businesses doing munitions management activities for the Department of Defense, the Department of Energy, the Coast Guard, and the National Guard. EPA requests that commenters submit additional information related to the types of businesses that may be impacted, the number of small businesses that would be affected, and the extent of adverse impacts to these businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 USC 350l et seq., authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this proposed rule do not constitute a ''collection of information'' as defined in 44 USC 3502(4) because they apply to Federal entities (i.e. DOD, DOE, Coast Guard, and National Guard), or for those sections that apply to non-Federal entities (e.g. emergency responses) they do not impose new recordkeeping or reporting requirements.

Comments regarding this determination may be sent to Ken Shuster (RE: ICR Determination), EPA (Mail Code 5303W), 401 M St, SW, Washington, D.C. 20460.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and tribal governments would not exceed approximately $190,000 per year over ten years or $1,300,000 in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VIII. References/Docket

The regulatory docket for this proposal contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 202–260–9327 and ask for the list of references in Docket #F–94–MMP–FFFFF.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Emergency responses, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Emergency responses, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 265

Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: October 31, 1995.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 260, 261, 262, 263, 264, 265, and 270 are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939, and 6974.

2. Section 260.10 is amended by revising the definition of ''on-site'' and by adding the following definitions, in alphabetical order, to read as follows:

§ 260.10 Definitions.

* * * * *

Explosives or munitions emergency response expert means Department of Defense (DOD) emergency explosive ordnance disposal (EOD) or technical escort unit (TEU) personnel; DOD-certified civilian contractor personnel; or other trained Federal, State, local, or civilian chemical or conventional munitions or explosives handling, render-safe, destruction, and response experts.

Explosives or munitions emergency means a situation involving the suspected or detected presence of unexploded explosive ordnance (UXO), damaged explosive ordnance, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harming military chemical warfare material or device, that creates an imminent threat to human health, including safety, or the environment, including property, as determined by an emergency response expert, and calls for immediate action by the emergency response expert to eliminate the threat.

Explosives or munitions emergency response means all immediate response activities by emergency response experts to eliminate an emergency threat by treating or destroying the ordnance in place or rendering the ordnance safe and/or removing it to another location for treatment or destruction. An emergency response includes transportation and treatment to the extent necessary to abate the immediate threat. Emergencies and expert responses can occur in the public sector or on Federal installations.

* * * * *

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy, and National Guard personnel. Military munitions include: gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic

missiles, bombs, warheads, mortar, artillery, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, devices, and components thereof managed under DOE's nuclear weapons program.

Military range means designated air, land, and water areas set aside, managed, and used to test and evaluate military explosives, other ordnance, and weapon systems, and to train personnel in their use and handling. Ranges include firing lines and positions, firing lanes, impact areas, and buffer zones with restricted access and exclusionary areas.

* * * * *

On-site 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. ''On-site'' also includes contiguous property comprised of an individual generation site and/or facility under the control of the same person, regardless of whether it is divided by a public or private right-of-way and whether 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 the owner controls and to which the public does not have access is also considered ''on-site'' property.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by revising paragraph (a)(2) introductory text and adding a new paragraph (g) to read as follows:

§ 261.2 Definition of solid waste.

(a) * * *

(2) Except for military munitions addressed in § 261.2(g), a *discarded material* is any material which is:

* * * * *

(g) *Military munitions.* (1) Unused military munitions are discarded material and therefore a solid waste when any of the following occurs:

(i) The munition is abandoned by being disposed of, burned, or incinerated, or treated prior to disposal, or

(ii) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal, or

(iii) The munition is deteriorated or damaged (e.g., the integrity of the round is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes, or

(iv) The munition has been declared a solid waste by an authorized military official.

(2) Used or fired military munitions are solid wastes if they meet the definition of discarded material in § 261.2(a)(2), unless they are excluded by paragraphs (a)(1) or (g)(3) of this section.

(3) Use of military munitions for their intended purpose does not constitute discard and is not subject to regulation under parts 260 through 271 of this chapter. ''Use for intended purpose'' includes:

(i) Use in training of troops and of explosives and munitions emergency response experts (including training in proper destruction of excess unused propellant or other munitions during training exercises),

(ii) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems, and

(iii) Recovery, collection, and on-range destruction of unexploded ordnance and contaminants during range clearance operations at active, inactive, or closing ranges.

(4) *Military munitions at ranges.* Munitions discharged during military activities at ranges are discarded material (and therefore solid waste) for purposes of § 1004(27) of RCRA under the following circumstances:

(i)(A) The munition is left in place at the firing range at the time the range is closed or when the range is transferred from military control, whichever occurs first, except that,

(B) Upon the issuance of DOD regulations that govern the cleanup of munitions on closed or transferred ranges and that provide for State and public participation in the cleanup decisionmaking process at specific sites, these DOD regulations shall supersede all RCRA authority over military munitions at closed and transferred military ranges.

(ii) The munition lands off-range and it is not promptly rendered safe (if necessary) and retrieved. To the extent feasible, any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

(5) Military munitions that have not been discharged, including subcomponents thereof, do not become a solid waste when they are being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922 through 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.10 is amended by adding, before the notes, new paragraphs (h) and (i) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(h) Persons responding to an explosives or munitions emergency in accordance with sections 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

(i) A generator of military munitions that become solid wastes under 40 CFR 261.2(g)(1)(ii through iv) is exempt from subpart B and §§ 262.32(b), 262.40(a), and 262.42 of this part when the munition is shipped under Department of Defense shipping controls (including at a minimum: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets, requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) from a federally-owned or operated installation to a DOD-owned or operated treatment, storage, or disposal facility, except that the Federal agency must report to the EPA Regional Administrator any waste that was not received by the receiving facility within

45 days of the day the waste was shipped.

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

1. The authority citation for Part 263 continues to read as follows:

Authority: 42 U.S.C. 6912(a), and 6922 through 6925.

2. Section 263.10 is amended by redesignating paragraph (c) as (e), and adding new paragraphs (c) and (d) to read as follows:

§ 263.10 Scope.

* * * * *

(c) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with §§ 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(d) The regulations in this part do not apply to the transportation of military munitions that become solid wastes under 40 CFR 261.2(g) (1)(ii through iv) when shipped under Department of Defense shipping controls (including at a minimum: Government Bill of Lading (GBL) (GSA Standard Form 1109) and associated Special Instructions and Notes (SIN) and Routing Instructions and Notes (RIN)—a series of files within an automated information base used in preparing the GBL continuation sheets, requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) from a DOD-owned or operated installation to a DOD-owned or operated treatment, storage, or disposal facility.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding new paragraphs (g)(8)(i)(D) and (g)8)(iv) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(8) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, or local official acting within the scope of his or her official responsibilities, or if an explosives or munitions emergency response expert determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or expert may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 263.l0(d). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

4. Part 264 is amended by adding new subpart EE, consisting of §§ 264.1200 through 264.1202, to read as follows:

Subpart EE—Military Hazardous Waste Munitions Storage

§ 264.1200 Applicability.

The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military magazines, except as § 264.1 provides otherwise. (NOTE: Depending on explosive hazards, military hazardous waste munitions may also be managed in other types of storage units, including containment buildings (40 CFR part 264, subpart DD), tanks (40 CFR part 264, subpart J), or containers (40 CFR part 264, subpart I)).

§ 264.1201 Design and operating standards.

(a) Hazardous waste munitions storage units must be designed and operated, with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, or atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For non-liquid wastes stored outdoors, provide that the waste will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids or precipitation are promptly detected and removed from the waste area; and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Military hazardous waste munitions stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) to be of sufficient strength and thickness to support the weight of any munitions stored and any equipment used in the unit;

(B) to provide working space for personnel and equipment in the unit; and

(C) to withstand movement activities that occur in the unit.

(iii) Designed with walls and earthen covers that direct an explosion in the unit in a safe direction to prevent propagation of the explosion to adjacent units.

(2) Above-ground magazines. Above-ground magazines must be designed to disintegrate rather than blow apart into fragments.

(3) Outdoor or open storage areas.

(c) Hazardous waste munition units must be adequately designed and spaced to prevent propagation from one storage unit to another in the event of detonation.

(d) Hazardous waste munitions must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. These procedures would supersede the security and inspection requirements of 40 CFR 264.14, the preparedness and prevention procedures of 40 CFR part 264, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 264, subpart D.

(e) Hazardous waste munitions must be packaged to ensure safety in handling and storage.

(f) Hazardous waste munitions must be inventoried at least annually.

(g) Inspection and monitoring as necessary to ensure stability and no migration of contaminants out of the magazine. At waste chemical munitions storage units, the preferred method for detection of leakers is the use of remote sensing equipment.

§ 264.1202 Closure and post-closure care.

(a) At closure of a military magazine which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for military magazines must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions magazine.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936, unless otherwise noted.

2. Section 265.1 is amended by adding new paragraphs (c)(11)(i)(D) and (c)(11)(iv) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(11) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, or local official acting within the scope of his or her official responsibilities, or if an explosives or munitions emergency response expert determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or expert may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 263.10(d).

4. Part 265 is amended by adding new subpart EE, consisting of §§ 265.1200 through 265.1202, to read as follows:

Subpart EE—Military Hazardous Waste Munitions Storage

§ 265.1200 Applicability.

The requirements of this subpart apply to owners or operators who store military wastes and munitions classified as hazardous wastes in military magazines, except as § 265.1 provides otherwise. (NOTE: Depending on explosive hazards, military hazardous waste munitions may also be managed in other types of storage units, including containment buildings (40 CFR part 265, subpart DD), tanks (40 CFR part 265, subpart J), or containers (40 CFR part 265, subpart I)).

§ 265.1201 Design and operating standards.

(a) Hazardous waste munitions storage units must be designed and operated, with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, or atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For non-liquid wastes stored outdoors, provide that the waste will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids or precipitation are promptly detected and removed from the waste area; and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Military hazardous waste munitions stored under this subpart may be stored in one of the following:

(1) Earth-covered magazines. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) to be of sufficient strength and thickness to support the weight of any munitions stored and any equipment used in the unit;

(B) to provide working space for personnel and equipment in the unit; and

(C) to withstand movement activities that occur in the unit.

(iii) Designed with walls and earthen covers that direct an explosion in the unit in a safe direction to prevent propagation of the explosion to adjacent units.

(2) Above-ground magazines. Above-ground magazines must be designed to

disintegrate rather than blow apart into fragments.

(3) Outdoor or open storage areas (for munitions that do not pose a significant potential for explosion).

(c) Hazardous waste munition units must be adequately designed and spaced to prevent propagation from one storage unit to another in the event of detonation.

(d) Hazardous waste munitions must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. These procedures would supersede the security and inspection requirements of 40 CFR 265.14, the preparedness and prevention procedures of 40 CFR part 265 Subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 265, subpart D.

(e) Hazardous waste munitions must be packaged to ensure safety in handling and storage.

(f) Hazardous waste munitions must be inventoried at least annually.

(g) Inspection and monitoring as necessary to ensure stability and no migration of contaminants out of the magazine. At waste chemical munitions storage units, the preferred method for detection of leakers is the use of remote sensing equipment.

§ 265.1202 Closure and post-closure care.

(a) At closure of a military magazine which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for military magazines must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions magazine.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding new paragraphs (c)(3)(i)(D) and (c)(3)(iii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device.

* * * * *

(iii) In the case of immediate responses involving military munitions, the responding military emergency response expert's unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 270.42 is amended by redesignating paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(h) *Military hazardous waste munitions treatment and disposal.* (1) The permittee is authorized to continue to accept military munitions designated as hazardous wastes under § 261.2(g) of this chapter, notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(i) The facility was in existence as a hazardous waste facility on the date when the waste munition became subject to hazardous waste regulatory requirements;

(ii) On or before the date when the waste munition becomes subject to hazardous waste regulatory requirements, the permittee submits a Class l modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(iii) The permittee submits a complete Class 2 modification request within 180 days of the date when the waste munition became subject to hazardous waste regulatory requirements.

(2) Within the 180-day period for submission of the Class 2 modification request, the facility may request the permitting agency to extend the 180 days for a specified period. If the permitting agency does not respond to the extension request within 30 days, the permittee is automatically granted the extension.

[FR Doc. 95–27434 Filed 11–7–95; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
November 8, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 235

Refinancing Mortgages Under Section 235(r) of the National Housing Act; Amendment; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. FR–3927–F–01]

RIN 2502–AG52

Refinancing Mortgages Under Section 235(r) of the National Housing Act; Amendment

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

ACTION: Final rule.

SUMMARY: This rule amends the regulations for refinancing mortgages under section 235(r) of the National Housing Act. Since the enactment of this program in 1988, mortgagees have not expressed an interest in participating in this program. Therefore, HUD seeks to enhance the program by providing for the payment by HUD, rather than by the mortgagee, of the incentive to the mortgagors and of specific refinancing costs, and by limiting the origination of these loans to the number of approved mortgagees that would make the program most attractive. This rule also eliminates obsolete regulations within 24 CFR part 235.

EFFECTIVE DATE: December 8, 1995.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Jr., Office of Insured Single Family, Department of Housing and Urban Development, room 9278, 451 Seventh Street SW., Washington, DC 20410; Telephone number (202) 708–0614, ext. 2214; TDD (202) 708–4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Congress added section 235 to the National Housing Act (12 U.S.C. 1715z) (the Act) in 1968. This provision authorized the Secretary to insure mortgages so that lower income families could acquire housing. Section 235 also authorized the Secretary to assist the mortgagor by contracting with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor. Many of the mortgages insured under section 235, which are still outstanding, were made during the high interest rate years of 1980, 1981, and 1982. HUD would be able to save substantial amounts of assistance payments if the mortgages were refinanced at the current lower interest rates. Congress enacted section 235(r) of the Act in 1988 so that mortgages insured and assisted under section 235 of the National Housing Act could be refinanced at a reduced interest rate.

A. HUD's Payment of Mortgagors' Incentives and Refinancing Costs

Although HUD published regulations in 1991 [1] and 1992 [2] to make the 235(r) program attractive to mortgagees and mortgagors, no mortgages have been made nor insured under the program. However, HUD published those regulations on the basis that the mortgagee would have to pay the incentive payment to the mortgagor as well as the refinancing costs, and then recoup these costs through a premium interest rate. Although section 235(r) authorized the Secretary to make such payments, Congress did not appropriate funds for the payments until it passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Pub. L. 103–327, approved September 28, 1994).

In light of the appropriation, HUD can now amend the 235(r) regulations to provide for the payment of the incentive and refinancing costs by HUD rather than the mortgagee. The mortgagee will not have to recoup any such costs through the maximum interest rate, which will be set by the Secretary. The Secretary has established the maximum rate by reference to the daily Government National Mortgage Association (GNMA) coupon quote as shown on a financial news wire service (such as Telerate), which is described below, plus a margin to be determined by the Secretary.

B. Limiting Origination to the Efficient Number of Mortgagees

HUD realized that in order to participate in the 235(r) program, most mortgagees would have to create a mechanism to provide for refinancing these loans. The expense of creating the mechanism to refinance a small universe of mortgages may have discouraged participation in this program. However, HUD considered that the mortgagee's expenses in preparing for the program would be most efficiently offset by the mortgagee's fees if participation was limited to one mortgagee. Therefore, HUD prepared and advertised a Request for Proposal (RFP) to contract with a single mortgagee that was approved by the Federal Housing Administration (FHA). The contract would have provided for the successful mortgagee to handle the disbursement of the funds that HUD is authorized to pay for mortgagor incentives and the refinancing costs, notify the mortgagors of the opportunity to refinance, and originate all the mortgages. However, HUD received no applications under the RFP.

HUD desires to make this program as attractive as possible to encourage mortgagees to make these mortgages, which will in turn save HUD subsidy funds. HUD is currently trying to ascertain the source of the lack of interest in the program and the contract that HUD sought to award. Therefore, the Secretary will decide after the publication of these amendments whether the program would be enhanced by limiting it to less than all HUD-approved mortgagees. The Secretary could then determine if it would be practical to publish another RFP in an attempt to obtain one or more contractors to handle the entire program for HUD.

Accordingly, this rule amends the interest rate provisions, formerly in § 235.1202(b)(3), to provide that the interest rate on these loans shall be negotiated between the parties. The interest rate shall not exceed the GNMA coupon rate, which is based on the closing price for three-month forward delivery contracts, closest to par but not exceeding par, on the date the Direct Endorsement mortgagee's underwriter executes the Mortgage Credit Analysis Worksheet, form HUD–92900 WS, or the date of the closing of the mortgage, whichever rate is higher, plus a margin to be determined by the Secretary. The Secretary will also pay the mortgagee a discount, as part of the refinancing costs. The maximum discount points that HUD will pay on these mortgages is to be determined by the Secretary. The mortgagors shall not be charged discounts. These provisions are located in § 235.1218(c) of this rule. As a result of this rule, HUD will no longer publish a notice in the Federal Register announcing the interest rate for the 235(r) mortgages or the margin.

This rule also amends the refinancing costs provisions, formerly in § 235.1202(b)(4), to eliminate the payment of the financing costs by the mortgagee, and to provide that the Secretary will pay for such costs, to be disbursed by the mortgagee on behalf of the Secretary. These provisions are located in § 235.1218(d) of this rule.

This rule amends the eligible mortgagees provision, formerly in § 235.1202(b)(5), to allow the Secretary to limit participation in the program to

[1] 56 FR 27622; June 14, 1991.

[2] 57 FR 62452; December 30, 1992.

a specified number of mortgagees, depending upon the amount of interest generated by these amendments. This provision is located in § 235.1218(e) of this rule.

This rule also makes other miscellaneous amendments to subpart H of part 235, to conform all the regulations with the changes in the program mentioned above.

II. Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. With this review, HUD has determined that while the 235(r) program is active, HUD can eliminate other portions of 24 CFR part 235 that are obsolete.

First, since HUD is no longer insuring new mortgages under section 235 of the National Housing Act, this rule eliminates all of the eligibility provisions in subpart A except those required for the 235(r) program. The provisions required for the 235(r) program will now be located in subpart H. HUD will maintain a ''savings'' clause in subpart A, which will provide that the regulations in the subpart in effect before the effective date of this rule will continue to apply to any outstanding mortgages.

Second, subparts D, E, and F implemented the Rehabilitation Sales Projects Program authorized by section 235(j) of the National Housing Act. HUD insured such mortgages in the 1970s, but few of these mortgages remain outstanding. This rule will eliminate these subparts except for a ''savings'' clause.

Therefore, this final rule will result in the elimination of approximately 14 pages of obsolete regulations.

III. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

Section 235(r)(7) of the National Housing Act provides that this program shall be implemented by a notice published in the Federal Register. However, since implementation of the program has required changes to codified regulations, it has been necessary for HUD to implement this program through rulemaking. The amendments described above would not impose a regulatory burden on the public, but instead would relieve a financial burden on the parties to these mortgages. Therefore, HUD finds that there is good cause for final rulemaking in this case, and that it is unnecessary to solicit prior public comment.

IV. Other Matters

A. National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, 451 Seventh Street SW, Room 10276, Washington, DC 20410.

B. Executive Order 12286

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled ''National Environmental Policy Act.''

C. Regulatory Flexibility Act

The Secretary, in approving this rule for publication, has certified, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule does not have a significant economic impact on a substantial number of small entities. If the rule affects small entities at all, the impact will be positive, as the rule is amending a HUD-insured mortgage program in an effort to make it more acceptable in the financial market.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. The rule involves the refinancing of mortgages insured under section 235 by mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by HUD will be reduced, thus saving HUD large cash outlays. The potential effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to HUD and would also receive an incentive payment to refinance. Therefore, no further review under the Order is necessary.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 235 is amended as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 is revised to read as follows:

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

§§ 235.1202, 235.1204, 235.1206, 235.1308, 235.1210, 235.1212, 235.1314, 235.1216, 235.1218, 235.1220, and 235.1222 [Redesignated as 235.1218, 235.1220, 235.1222, 235.1224, 235.1266, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238].

2. Sections 235.1202, 235.1204, 235.1206, 235.1208, 235.1210, 235.1212, 235.1214, 235.1216, 235.1218, 235.1220, and 235.1222 are redesignated as §§ 235.1218, 235.1220, 235.1222, 235.1224, 235.1226, 235.1228, 235.1230, 235.1232, 235.1234, 235.1236, and 235.1238, respectively.

§ 235.1 [Redesignated as 235.1202]

3. Section 235.1 is redesignated as § 235.1202, and it is amended by

revising the introductory text of paragraph (a) to read as follows:

§ 235.1202 Cross-reference.

(a) All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages covering one- to four-family dwellings under section 203 of the National Housing Act apply to mortgages insured under section 235(r) of the National Housing Act, except the following provisions:

* * * * *

3. A new § 235.1 is added to subpart A to read as follows:

§ 235.1 Applicability of regulations.

The regulations regarding eligibility requirements for homes for lower income families in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(i) of the National Housing Act.

§ 235.2 [Removed]

4. Section 235.2 is removed.

§ 235.3 [Redesignated as 235.1204]

5. Section 235.3 is redesignated as § 235.1204.

§ 235.3 [Redesignated as 235.1204]

6. Section 235.5 is redesignated as § 235.1206.

§ 235.9 [Removed]

7. Section 235.9 is removed.

§ 235.10 [Redesignated as 235.1208 and amended]

8. Section 235.10 is redesignated as § 235.1208, and is amended by removing paragraphs (a) and (b), by redesignating paragraphs (c), (d), and (e) as paragraphs (a), (b), and (c), respectively, and by removing the parenthetical phrase at the end of paragraph (c).

§ 235.11 [Removed]

9. Section 235.11 is removed.

§ 235.12 [Redesignated as 235.1210]

10. Section 235.12 is redesignated as § 235.1210.

§§ 235.13, 235.15, 235.16, 235.18, and 235.20 [Removed]

11. Sections 235.13, 235.15, 235.16, 235.18, and 235.20 are removed.

§ 235.22 [Redesignated as 235.1212]

12. Section 235.22 is redesignated as § 235.1212.

§§ 235.25, 235.30, 235.31, and 235.32 [Removed]

13. Sections 235.25, 235.30, 235.31, and 235.32 are removed.

§ 235.33 [Redesignated as 235.1214]

14. Section 235.33 is redesignated as § 235.1214.

§§ 235.35, 235.37, 235.38, and 235.39 [Removed]

15. Sections 235.35, 235.37, 235.38, and 235.39 are removed.

§ 235.40 [Redesignated as § 235.1216]

16. Section 235.40 is redesignated as § 235.1216.

§ 235.45 [Removed]

17. Section 235.45 is removed.

18. Subpart D is revised to read as follows:

Subpart D—Rehabilitation Sales Projects

§ 235.501 Applicability of regulations.

The regulations regarding eligibility requirements, contract rights and obligations, and assistance payments for rehabilitation sales projects in force before December 8, 1995, will continue to govern the rights and obligations of mortgagors, mortgagees, and the Department of Housing and Urban Development with respect to loans insured under section 235(j) of the National Housing Act.

Subparts E and F—[Removed]

19. Subparts E and F are removed.

§ 235.1200 [Amended]

20. Section 235.1200 is amended by removing the second sentence.

21. Section 235.1218 is revised to read as follows:

§ 235.1218 Additional eligibility requirements.

(a) *Mortgage amount.* It must be in an amount not exceeding the lesser of:

(1) The unpaid principal balance due on the mortgage being refinanced, including any advances properly made by the mortgagee under the terms of the mortgage and any current interest due and delinquent interest not to exceed two months; and

(2) The original principal amount of the mortgage being refinanced.

(b) *Maturity date.* It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the terms for the refinancing mortgage shall be rounded down to the next whole year.

(c) *Interest rate.* (1) The 235(r) interest rate is the rate negotiated between the parties. Such rate shall not exceed the GNMA coupon rate plus a margin to be determined by the Secretary. The GNMA coupon rate is based on the closing price for three-month forward delivery contracts closest to par but not exceeding par on one of the following dates, whichever rate is higher:

(i) The date the Direct Endorsement mortgagee's underwriter signs the Mortgage Credit Analysis Worksheet (form HUD–92900 WS); or

(ii) The date the mortgage is closed.

(2) The Secretary will pay the mortgagee a discount as part of the refinancing costs. The maximum discount points will be determined by the Secretary.

(3) For a mortgage to be insurable under this subpart, the interest rate on the mortgage must be less than the interest rate shown on the mortgage being refinanced. The Secretary shall determine how much less the interest rate on the mortgage shall be in order for it to be insured.

(d) *Mortgagors' Incentive and Refinancing Costs.* The incentive to the mortgagors and the refinancing costs that the Secretary will pay for mortgages insured under this subpart are as follows:

(1) An amount determined by the Secretary to be an incentive to the mortgagor to refinance a mortgage insured under section 235; and

(2) Amounts as determined by the Secretary for discounts, loan origination fees, closing costs, and other costs incurred in connection with the refinancing.

(e) *Eligible mortgagees.* The Secretary shall determine whether this program will be open to all approved Direct Endorsement mortgagees, or only to those approved Direct Endorsement mortgagees that meet certain specified requirements. The Secretary may limit the program to a designated number of Direct Endorsement approved mortgagees if such a limitation will facilitate the most expeditious handling of these refinancing mortgages.

(f) *Eligible mortgagor.* (1) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and from whom a recertification was obtained within the preceding twelve months prior to the application for the 235(r) mortgage, or a new recertification was required prior to the execution of the mortgage credit worksheet by the direct endorsement lender, or the firm commitment was issued by HUD.

(2) The mortgagor must be an occupant of the property securing the mortgage.

(3) The mortgagor has not received payments for the costs of refinancing or the mortgagor's incentive, nor have such payments been made on his behalf, as described in paragraph (d) of this section, for a period of 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(4) The mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage, or the mortgagee has executed a HUD Notice of Suspension form that suspends the assistance payment contract from the date of disbursement of the mortgage loan.

(5) The mortgagor has agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(6) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(7) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the monthly payments due under the mortgage by more than $50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor to establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage and that the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34.

(8) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(g) *Monthly Payments.* The mortgage must have monthly principal and interest payments at the 235(r) interest rate that are less than the monthly payments of principal and interest on the mortgage being refinanced.

§ 235.1220 [Amended]

22. Section 235.1220 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 235.1220 Processing section 235(r) mortgages under the direct endorsement program.

* * * * *

(c) *Authority to sign.* The mortgagees that have the authority to originate and close mortgages in accordance with § 235.1218(e) shall have the authority to sign for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

* * * * *

Dated: September 1, 1995.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–27430 Filed 11–7–95; 8:45 am]

BILLING CODE 4210–27–P

Reader Aids

Federal Register

Vol. 60, No. 216

Wednesday, November 8, 1995

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Public inspection announcement line **523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

55423–55650 1
55651–55776 2
55777–55988 3
55989–56114 6
56115–56222 7
56223–56502 8

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6846 55987
6847 56113
6848 56221

Executive Orders:
12170 (See Notice of October 31, 1995) 55651

Administrative Orders:
Notices:
October 31, 1995 55651

5 CFR

213 55653
532 55423

7 CFR

2 56392
24 56206
301 55777
322 55989
443 55781
1131 55989
1755 55991
1767 55423

Proposed Rules:
401 56257
443 56257
457 56257
928 56003
1421 55807

9 CFR

80 55989
94 55440
161 55443
318 55962
319 55962
381 55962

10 CFR

Proposed Rules:
70 55808

11 CFR

Proposed Rules:
9002 56268

12 CFR

Proposed Rules:
701 55663
960 55487

13 CFR

122 55653

Proposed Rules:
114 55808

14 CFR

25 56223
29 55774
39 ..... 55443, 55781, 55784, 55785, 56115, 56224
71 ..... 55445, 55649, 55655, 55656, 55787
108 55656

Proposed Rules:
Ch. I 56269
23 55491
39 ..... 55491, 55495, 55496, 55668, 55673, 55680, 55681, 55811, 56270, 56271, 56274
71 ..... 55498, 55502, 55503, 55813, 55814, 56276, 56277

16 CFR

259 56230

17 CFR

Proposed Rules:
36 56093

18 CFR

11 55992

Proposed Rules:
Ch. I 56278
284 55504

19 CFR

10 55995
12 55995
102 55995
111 56117
178 55995

21 CFR

73 55446
184 55788
510 55657
520 55657
522 55657
524 55657
526 55657
529 55657
558 55657

23 CFR

Proposed Rules:
710 56004
711 56004
712 56004
713 56004
714 56004
715 56004
716 56004
717 56004
718 56004
719 56004
720 56004
721 56004
722 56004
723 56004
724 56004

725.....56004
726.....56004
727.....56004
728.....56004
729.....56004
730.....56004
731.....56004
732.....56004
733.....56004
734.....56004
735.....56004
736.....56004
737.....56004
738.....56004
739.....56004
740.....56004

24 CFR

235.....56498
888.....55934
Proposed Rules:
570.....56104

25 CFR

Proposed Rules:
161.....55506

26 CFR

1.....56117

29 CFR

102.....56233
Proposed Rules:
1910.....56127
1915.....56127
1926.....56127, 56279

30 CFR

250.....55683
914.....55649
Proposed Rules:
202.....56007
206.....56007
211.....56007, 56033
764.....55815
942.....55815

32 CFR

199.....55448
706.....56120, 56237
Proposed Rules:
552.....55816

33 CFR

100.....55456
165.....55456
402.....56121
Proposed Rules:
100.....55511
117.....55515
157.....55904
164.....55890

34 CFR

370.....55758

36 CFR

Ch. I.....55789
1.....55789
7.....55789
9.....55789
14.....55789
20.....55789
64.....55789
Proposed Rules:
7.....56034

37 CFR

1.....55691
5.....55691
10.....55691
255.....55458

38 CFR

2.....55995
3.....55791
21.....55995

40 CFR

52 .....55459, 55792, 56238, 56241, 56244
70.....55460
81.....55792
300.....55456
Proposed Rules:
52 .....55516, 55820, 56127, 56129, 56279, 56280
63.....56133
70 .....55516, 56281, 56285
81.....55820
86.....55521
260.....56468
261.....56468
262.....56468
263.....56468
264.....56468
265.....56468
270.....56468

41 CFR

101–41.....56246
201–9.....55660
201–39.....56248

42 CFR

Proposed Rules:
100.....56289

44 CFR

65 .....55467, 55469, 56249, 56251, 56252
67.....55471, 56253
Proposed Rules:
67 .....55525, 56300, 56307

46 CFR

514.....56122
Proposed Rules:
31.....55904
35.....55904

47 CFR

0.....55996
11.....55996
64.....56124
73 .....55996, 56000, 56001, 56125, 56255
Proposed Rules:
47.....56034
73 .....55476, 55661, 55801, 56310
74.....55476
90.....55484
97.....55485
Proposed Rules:
Ch. I.....55529
73 .....55820, 55821, 55822
100.....55822

48 CFR

1215.....55801
1252.....55801
1253.....55801
1815.....56125
Proposed Rules:
9.....55960
31.....56216
15.....56035
1213.....55827
1237.....55827
1252.....55827

50 CFR

641.....55805
672.....56255
675 .....55662, 55805, 55806, 56001

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 7, 1995